

2008

State of Utah v. Greg C. Johnson and Kerry E. Lynn : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	
	:	
vs.	:	
	:	
GREG C. JOHNSON, and	:	Appellate No: 20080701-CA
KERRY E. LYNN,	:	Trial Court No: 01160026 and
	:	01160027
Defendant/Appellants.	:	
	:	

BRIEF OF APPELLANTS

APPEAL FROM ORDERS
FROM THE SIXTH DISTRICT COURT
HONORABLE WALLACE A. LEE

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FILED
UTAH APPELLATE COURTS

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ARGUMENT I.

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STATEMENT OF JURISDICTION

This appeal is taken from the Memorandum Decision and Orders entered on July 17, 2008 against Defendant/Appellants Gregg C. Johnson (“Johnson”) and Kerry E. Lynn (“Lynn”) by the Honorable Wallace A. Lee in the Sixth Judicial District Court for Wayne County. The Utah Court of Appeals has jurisdiction to hear appeals from the court of record in criminal cases pursuant to Utah Code Annotated § 78A-4-103(2)(e).

ISSUES PRESENTED AND STANDARDS OF REVIEW

Issue I: Whether the Trial Court clearly abused its discretion in ruling that the Court Orders, which provided that the Defendants’ hunting privileges were suspended until April 22, 2007, did not direct the Division of Wildlife Resources to do anything, and as such, the Division was not required to reinstate Johnson and Lynn’s hunting privileges pursuant to Utah Code Ann. §23-19-9.1.

Standard of Review: Since this issue involves the Trial Court’s interpretation of its own order, it is reviewed for clear abuse of discretion with deference given to the Trial Court. Uintah Basin v. Hardy, 179 P.3d 786, 788 (Utah 2008).

Issue II: Whether the Trial Court erred in its interpretation of Utah Code Ann. §23-19-9.1, by ruling this statute did not apply to the Court Orders, and thereby holding that the Court Orders would run consecutively with the conflicting Division Default Orders, and whether the Trial Court erred in its interpretation of Utah Code Ann. §23-19-9 by ignoring the “plain language” of this statute and by ruling that the provisions contained in Utah Code Ann. §23-19-9 (6)(c) would, in this matter, allow for consecutive hunting license suspensions.

Standard of Review: Since this issue involves statutory interpretation, the standard of review is one of correctness, without according deference to the Trial Court’s legal conclusions. Bonham v. Morgan, 788 P.2d 497, 499 (Utah 1989).

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The text of the determinative statutes, Utah Code Ann. §23-19-9.1 and Utah Code Ann. §23-19-9 appears in Addendum 1 and 2 respectively and in the body of this brief.

STATEMENT OF THE CASE

A. Nature of the Case.

This case is before the Court of Appeals to render an opinion as to whether The Division of Wildlife Resources (“the Division”) is required to reinstate the hunting privileges of Defendants Greg C. Johnson (“Johnson”) and Kerry E. Lynn (“Lynn”) pursuant to Court Orders entered by the Sixth District Court or about January 25, 2005.

B. Course of Proceedings.

In the Sixth District Court, Loa County, State of Utah, the Appellants, Johnson and Lynn were charged on November 21, 2001 with, among other things, wanton destruction of a trophy deer without a valid license. [R 6-10 and 138-142]. As part of Johnson and Lynn’s extensive plea negotiations with the Sixth District Court Prosecutor, Marvin D. Bagley, the impending loss of Defendants’ hunting privileges was of prime importance. Therefore, the Prosecutor agreed that if Johnson and Lynn would plead guilty, successfully complete their probation without any further offenses, paid all fines, and complete all community services, that Johnson and Lynn could then submit a 402 Motion and have their convictions amended to a misdemeanor and that an Order would

then be entered providing that the Defendants' hunting license and/or privileges would only be suspended for a period of five years from the date of conviction rather than the impending Division suspension of longer duration. [R at 54 ¶3, 180 ¶3, and 274 P.5. Ls.17-25, and 274 P.6 L.1]

Johnson and Lynn plead guilty on April 22, 2002 to Wanton Destruction of a Trophy Deer, a third Degree Felony, under Utah Code Ann. § 23-20-4 and all other charges were dismissed. [R. at 24-26, 27-30, 156-158, and 159-162].

As provided for in Utah Code Ann. §23-19-9(4)(a) and (5), on August 28, 2002. the Division entered a Default Order suspending big game privileges of Johnson for 14 years. [R. at 67 ¶9, and 91-93]. Also, as provided for in Utah Code Ann. §23-19-9(4)(a) and 5, on August 29, 2002, the Division entered a Default Order suspending the big game privileges of Lynn for 21 years. [R. at 193 ¶10 and 217-219].

Johnson and Lynn did not contest the entry of these suspension orders because of their agreement with the Sixth District Court Prosecutor that upon successful completion of their probation, a Court Order would be entered declaring their hunting privileges were only suspended to April 22, 2007 rather than the longer Division suspensions. Therefore, it did not matter what actions

the Division took in reference to Johnson and Lynn's hunting privileges since the subsequent Court Order would trump the longer suspension periods in the Division Default Orders. [R. at 274 P.5 Ls 20-25, and 274 P.6 Ls 1, 8-13].

After the parties had successfully completed probation, they submitted a Motion to Reduce Categorization of Offense in which they moved the Trial Court to reduce the categorization of the offense from a third degree felony to a misdemeanor and for the Trial Court to reduce the term of the Division Default suspension so that their hunting privileges would only be suspended for a period of five years from conviction. [R. 38-39, 169-170]. The Prosecutor, Marvin D. Bagley, approved as to form Johnson and Lynn's Notice to Submit. [R. at 47-48, 175-176].

On or about January 25, 2005 the Court entered two Orders captioned Order Granting 402 Motion (hereinafter collectively referred to as "Court Orders" or separately as "Court Order") [R. at 49-50, 275-276, Pleading Copy in Addendum 3 for Johnson and Pleading Copy in Addendum 4 for Lynn]. These Orders specifically state that "Defendant's hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction. " [R. at 49-50, 256a-256b, See Addendum 3 and 4]. Therefore, after entry of the January 25, 2007

Court Orders, Johnson and Lynn's hunting privilege suspensions would only run for another two years and three months rather than the longer Division suspension terms.

After April 22, 2007, Defendant Johnson attempted to get his hunting privileges reinstated by presenting the Division with a copy of his Court Order and this request was refused. Even though Johnson had a Court Order indicating that his hunting privileges were suspended until April 22, 2007, the Division was requiring that he get a court order specifically stating that the Division had to reinstate his hunting privileges. [R. at 274 P.7 Ls. 15-20].

Therefore, on July 30, 2007, Johnson and Lynn each filed a Motion for Order Requiring Division of Wildlife Resources to Reinstate Hunting Privileges and Licenses. [R. at 51-52 and 177-178].

C. Disposition at the Trial Court.

The Honorable Wallace A. Lee, on July 17, 2008 issued a Memorandum Decision and Order for both Johnson and Lynn. Judge Lee denied the Johnson and Lynn Motions. [R. At 126-128, 267-269, Pleading Copy of Memorandum Decision and Order for Gregg C. Johnson, and Pleading Copy of Memorandum Decision and Order for Kerry E. Lynn at Addendum 6].

STATEMENT OF THE FACTS

1. That on November 29, 2001, Appellants Greg C. Johnson (“Johnson”) and Kerry E. Lynn (“Lynn”) by Information were charged in the Sixth District Court, in and for Wayne County, State of Utah, with among other things Wanton Destruction of Trophy Deer Without a Valid License in violation of Utah Code Ann. §23-20-4. [R. at 6-10 and 138-142].

2. That prior to pleading guilty, both Johnson and Lynn participated in lengthy plea negotiations with the Sixth District Court Prosecutor, Marvin D. Bagley, which included two conferences, one of which was a special trip down with their Utah County attorney, Mary Ann Hansen, to the Prosecutor’s office in Richfield to meet with Mr. Bagley for a two hour meeting. [R. at 274 P.5 Ls. 10-25].

3. That as part of Johnson and Lynn’s lengthy plea negotiations, the impending suspension by the Division of Wildlife Resources (“Division”) of Johnson and Lynn’s hunting privileges was the key factor in these negotiations. [R. at 274 P.5 Ls. 17-20].

4. That as a result of the plea negotiations, the Prosecutor agreed that if the Johnson and Lynn would plead guilty, successfully complete their probation

without any further offenses, paid all fines, and complete all community services, that both Johnson and Lynn could then submit a 402 Motion and have their convictions amended to a misdemeanor and that the Court would enter an order declaring that Defendant's hunting license and/or privileges would only be suspended for a period of five years from conviction rather than the for the longer duration of the impending Division suspension. [R. at 274 P.5 Ls. 10-25 and 274 P.6 L1].

5. That on April 22, 2002, Johnson and Lynn pled guilty to and were convicted of a Third Degree Felony of Wanton Destruction of a Trophy Deer without a valid license under Utah Code Ann. § 23-20-4. [R. at 24-26, 27-30, 156-158, and 159-162].

6. That based upon Johnson and Lynn's guilty pleas, Judge David L Mower sentenced them to a serve a term of 0 - 5 years at the Utah State Prison, and then suspended the sentence in lieu of a twenty (20) day jail term and 24 months probation. Johnson and Lynn were ordered to pay jointly and severely fines in the amount of \$8,000.00. The Judgment was signed on April 30, 2002. [R. at 24-26, 27-30, 156-158, and 159-162].

7. That Amended Judgments were signed for both Johnson and Lynn

on May 28, 2002, and Modification of Amended Judgments were signed for both Johnson and Lynn on August 19, 2002. These Judgments eliminated the twenty (20) day jail sentence, imposed 100 hours of community service, and added a \$1,000.00 surcharge for Johnson and a \$1,000.00 surcharge for Lynn. [R. at 31-35, 36-37, 163-166, and 167-168].

8. That on August 28, 2002, pursuant to Utah Code Ann. § 23-19-9, the Division entered a Default Order suspending Johnson's big game hunting privileges for 14 years. [R. at 67 ¶¶9 and 91-93].

9. That on August 29, 2002, pursuant to Utah Code Ann. §23-19-9, the Division entered a Default Order suspending Lynn's big game hunting privileges for 21 years. [R. at 193 ¶¶9 and 217-219].

10. That Johnson and Lynn did not respond to the Division's administrative suspension proceedings and as such Default Orders were entered against them. [R. at 91-93 and 217-219].

11. That Johnson and Lynn did not respond to the Division's action because of their agreement with the Prosecutor that upon successful completion of Johnson and Lynn's probation that their hunting privileges would only be suspended for five years from date of conviction rather than for the term of the

longer division suspensions. [R. at 274 P.5 Ls 20-25, and 274 P.6 Ls 1, 8-13].

12. That Johnson and Lynn collectively paid over \$10,000.00 in court fines and they both completed at least 100 hours of community service. [R. at 40-46, 171-174, 274 P.6 Ls. 14-17, and Copies of Court Dockets at Addendum 7].

13. That upon Johnson and Lynn's successful completion of probation, they both submitted a Notice of Compliance, Motion to Reduce Categorization of Offense, Notice to Submit, and Order Granting 402 Motion. [R. at 38-39, 40-46, 47-48, 49-50, 169-170, 171-174, 175-176 and 275-276].

14. That on January 24, 2005, the Prosecutor, Marvin D. Bagley, approved as to form the **Johnson** Notice to Submit and Judge K.L. McIlff signed the **Johnson** Order Granting 402 Motion. [R. at 47-48 and 49-50 and Pleading Copies at Addendum 3]. On January 25, 2005, Johnson's charges were amended to Attempted Wanton Destruction of Protected Wildlife. [See Johnson Court Docket at Addendum 7].

15. That on January 24, 2005, the Prosecutor, Marvin D. Bagley, approved as to form the **Lynn** Notice to Submit and the **Lynn** Order was court stamped on the first page but was not signed since it was stapled to the Johnson Order and as such

it was overlooked by Judge McIlff. [R. at 175-176, 275-276 and Pleading Copies in Addendum 4 and 8]. On January 25, 2005, even though Judge McIlff inadvertently did not signed the Lynn Order Granting 402 Motion, Lynn's charges were amended to Attempted Wanton Destruction of Protected Wildlife. [See Lynn's Court Docket at Addendum 7].

16. That the Court Clerk mailed the Johnson and Lynn Orders to counsel, Mary Ann Hansen. Both of said Orders had the court stamp on the top right of the first page and the Lynn Order had a signed signature page attached to it; but said signature page belonged to the Johnson Order. Since the Johnson Court Order was not signed, Counsel called the Court and requested the signature page which was then faxed to counsel. [R. at 230-231, 232-241, 251-252, 255-256, 275-276 and See Pleading copies in Addendum 8].

17. That when it was discovered that the original **Lynn** Order had not been signed, an Order Correcting Clerical Oversight was signed declaring that the Lynn Original Order Granting 402 Motion be signed with an effective date of January 25, 2005. [R. at 255-256, 275-276 and See Pleading Copy at Addendum 8].

18. That both the Johnson and Lynn Order Granting 402 Motion ("hereinafter Court Orders") reduced their Third Degree Felonies to Misdemeanor

simple attempted wanton destruction of protected wildlife and both Court Orders declared that Johnson and Lynn's "hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction. [R. at 49-50, 275-276 and Pleading Copies at Addendum 3 and 4].

19. That after April 22, 2007, Johnson attempted to get his hunting privileges reinstated with the Division, but when he presented the Division with a copy of his Court Order the Division refused to reinstate Johnson's hunting privileges and instead required that he provide them with an order specifically directing the Division to reinstate his hunting privileges. [R. at 274 P.7 Ls. 15-20].

20. That since it was after April 22, 2007 and the Division was refusing to reinstate hunting privileges, on July 30, 2007, Johnson and Lynn each filed a Motion for Order Requiring Division of Wildlife Resources to Reinstate Hunting Privileges. [R. at 51-52, 177-178].

21. That on July 17, 2008, the Honorable Wallace A. Lee entered a Memorandum Decision and Order denying Johnson and Lynn's Motion and held as follows:

The Court finds that the 25 January, 2005 Order of this Court did not direct the Division to do anything. Thus, Section 23-19-9.1 does not apply in this case.

Further, the Court finds if there is a court order suspending hunting privileges and a similar administrative order entered by the Division, these orders may run consecutively. See Utah Code Annotated, Section 23-19-9(6)(c).

[R. at 126-129, 267-270, and Pleading Copies at Addendum 5 and 6].

SUMMARY OF ARGUMENT

The Division of Wildlife Resources (“Division”) is required to reinstate the hunting privileges of Appellants Greg C. Johnson (“Johnson”) and Kerry E. Lynn (“Lynn”) pursuant to the Johnson Order Granting 402 Motion and the Lynn Order Granting 402 Motion (“collectively Court Orders). The Court Orders specifically provide that the “Defendant’s hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction.” [R. 49-50, 275-276, and Pleading Copies at Addendum 3 and 4].

The Court Orders entered on or about January 25, 2005, and the facts surrounding the entry of said Orders, verifies that the suspensions were entered pursuant to plea negotiations and were meant by Johnson, Lynn, Prosecutor, and the Trial Court to modify the Division Default Orders of longer duration; and therefore, Johnson and Lynn are entitled to a reinstatement of their hunting privileges as of April 22, 2007. Additionally, there would be no plausible reason for

Johnson and Lynn to Motion the Trial Court, nearly two and one-half years after the Division Default Orders, if the hunting suspension provisions in the Court Orders were meant to run either consecutively or concurrently with the Division Default Orders.

The Memorandum Decision and Order (“Memorandum Decision”) entered by the Honorable Wallace A. Lee erred in ruling that the Court Orders did not require the Division to do anything, and as such, the Division was not required to reinstate the hunting privileges of Johnson and Lynn, and that the statutory provisions of Utah Code Ann. §23-19-9.1 do not apply. Judge Lee further held that Utah Code Ann. §23-19-9(6)(c) allows for court and division ordered suspensions to run consecutively. This ruling is a “clear abuse of discretion” by Judge Lee since he incorrectly cited critical facts which lead to the wrong conclusion and ignored the plain language of Utah Code Ann. §23-19-9(6)(c) in ruling that the Court Order and the Division Default Order could run consecutively when the “plain language” of the statute does not provide for this sequence.

Next, Judge Lee erred in interpreting the statutory provisions of Utah Code Ann. §23-19-9.1 did not apply. Said statute requires the Division to comply with all court orders to “withhold, suspend, restrict, or reinstate” hunting privileges. In

interpreting a statute, a court is required to look to the “plain language” of a statute and interpret it in harmony with other related statutes.

Utah Code Ann. §23-19-9.1 and §23-19-9 are related statutes and when interpreting the “plain language” of these two statutes together, it is clear that the Legislature intended the courts to be the final decision makers, and it is obvious that the term “reinstatement” contained in Utah Code Ann. §23-19-9.1 applies to all court orders regardless of whether said orders are done in the context of a court suspension or not.

And finally, when drafting Utah Code Ann. §23-19-9, the Legislature may not have contemplated individuals going through the court system to preempt Division suspension orders; however, the Courts must still look to the “plain language” and presume that the Legislature used the words “withhold, suspend, restrict, or reinstate” carefully and these words have meaning. Therefore, the Division is required to comply with the Court Orders and reinstate the hunting privileges of Johnson and Lynn.

DETAIL OF ARGUMENT

ARGUMENT I

THE TRIAL COURT CLEARLY ABUSED ITS DISCRETION IN RULING THAT THE COURT ORDERS DID NOT DIRECT THE DIVISION TO DO ANYTHING AND, AS SUCH, THE DIVISION WAS NOT REQUIRED TO REINSTATE THE HUNTING PRIVILEGES OF JOHNSON AND LYNN AND THE PROVISIONS OF UCA §23-19-9.1 DID NOT APPLY

The Utah Supreme Court in Uintah Basin v. Hardy, 179 P.3d 786, 788 (Utah 2008) held that “ [a] court’s interpretation of its own order is reviewed for clear abuse of discretion and we afford the district court great deference. In support of this ruling, the Uintah Basin case references Enodis Corp.v. Employers Ins. of Wausau (In. Re Consol. Indus. Corp.), 360 F3d 712, 716 (7th Cir. 2004) which holds that “[w]e will not reverse a court’s interpretation of its own order unless it is a ‘abuse of discretion,’ because a court that issued an order is in the best position to interpret it. “

As previously outlined, the reinstatement of hunting privileges contained within the Defendant Greg C. Johnson (“Johnson”) and Defendant Kerry E. Lynn (“Lynn”) Order Granting 402 Motions (collectively “Court Orders”) were part of Johnson and Lynn’s extensive plea negotiations in which it was agreed that if Johnson and Lynn would plead guilty and complied with the terms of their probation, then their hunting

privileges would only be suspended for a period of five years from conviction rather than the longer suspension period the Division would be subsequently pursuing. [R. at 54¶3, 180¶3, 274 P.5 Ls. 17-25, and 274 P.6 L.1]. The Defendants successfully completed probation, and so the Trial Court entered the Court Orders which, among other things, specifically stated that “Defendant’s hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction.” [R. at 49-50, 275-276 and Pleading Copies in Addendum 3 and 4].

After April 22, 2007, Johnson presented his Court Order to the Division so that he could get his big game hunting privileges reinstated. The Division denied his request. [R. at 274 P.7 Ls. 15-20]. Therefore, in order to get the Division to reinstate their hunting privileges, Johnson and Lynn were required to submit to the Trial Court a Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Greg C. Johnson and Kerry E. Lynn. [R. 51-52 and 177-178].

However, the Honorable Wallace A. Lee denied said Motions and issued a Memorandum Decision and Order (hereinafter “Memorandum Decision”) and ruled in pertinent part as follows:

The Court finds the 25 January 2005 Order of this Court did not direct the Division to do anything. Thus, Section 23-19-9.1 does not apply.

Further the Court finds if there is a court order suspending hunting privileges and a similar administrative order entered by the Division, these orders may run consecutively. See Utah Code Annotated, Section 23-19-9(6)(c).

[R. at 126-129, 267-270 and Pleading Copies in Addendum 5 and 6]. Judge Lee then stated there is “no basis to require the Division to change its administrative order concerning suspension of the defendant’s hunting privileges.” [R. at 126-129, 267-270 and Pleading Copies in Addendum 5 and 6].

Consequently, this Court is required to determine if Judge Lee abused his discretion in ruling that the Court Order provisions specifically stating that “Defendant’s hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction” is just useless verbiage and whether the Division is required to reinstate Johnson and Lynn’s hunting privileges.

The facts and relevant time lines are as follows:

- 04/02/02 Johnson entry of plea and sentencing before Judge David L. Mower. Prosecutor Marvin D. Bagley. Attorney for Johnson, Mary Ann Hansen. [R. at 24-26 and 27-30];
- 04/02/02 Lynn entry of plea and sentencing before Judge David L. Mower. Prosecutor Marvin D. Bagley. Attorney for Lynn, Mary Ann Hansen. [R. at 156-158 and 159-162];

- 08/28/02 Division Default Order suspending big game privileges for 14 years against Johnson. [R. at 67 ¶¶9 and 91-93]. Johnson did not respond to agency action because of plea negotiations and agreement that his hunting privileges would only be suspended for a five year period rather than the longer Division suspension term, if he successfully completed probation . [R. at 274 P.6 Ls. 8-13];
- 08/29/02 Division Default Order suspending big game privileges for 21 years against Lynn. [R. at 193 ¶¶10 and 217-219]. Lynn did not respond to agency action because of plea negotiations and agreement that his hunting privileges would only be suspended for a five year period, rather than the longer Division suspension term, if he successfully completed probation. [R. at 274 P.6 Ls. 8-13].
- 01/24/05 Order entered by Judge K.L. Mciff declaring Johnson's hunting privileges are suspended to April 22, 2007. [R. at 49-50 and Pleading Copy at Addendum 3]. Notice to Submit, approved as to form on January 24, 2005 by the prosecutor, Marvin D. Bagley. [R. 47-48 and Pleading Copy at Addendum 3].
- 01/25/05 Order entered declaring Lynn's hunting privileges are suspended to April 22, 2007. [R. at 275-276 and Pleading Copy at Addendum 4]. Notice to Submit, approved as to form on January 24, 2005 by the prosecutor, Marvin D. Bagley. [R. at 255-256 and Pleading Copy at Addendum 4].

As previously cited, a Court is granted great latitude in interpreting its own order because it "is in the best position to interpret it." Enodis Corp, Id. However, in the instant case, the newly appointed Judge Lee is not in the best position to interpret the Court Orders since he was not a party to any of the prior proceedings.

The only individuals who have been involved in the nearly seven year process are Johnson, Lynn and their attorney, Mary Ann Hansen. Both of the prior judges, David L. Mower and K.L. McIlff are retired. Additionally, the prosecutor, Marvin D. Bagley, is now the Sixth District Court Judge and as such cannot decide this case, interpret, or give his input on the Court Orders.

Due to Judge Lee's unfamiliarity with the case, the analysis in his Memorandum Decision is flawed and contains inaccuracies. Judge Lee specifically states that the Court Orders and the Divisions Default Orders were entered "at or about the same time." [R. at 127, 268 and See Pleading Copies at Addendum 5 and 6]. This statement is clearly incorrect. It was almost two and one-half years between the entry of the Division Default Orders (August 28 and 29, 2002) and the Court Orders (on or about January 25, 2005).

One could maybe argue that if the Default Orders and the Court Orders were entered close in time, that they were possibly meant to run concurrently or consecutively. However, in this matter, the facts demonstrate that the Court Orders were meant to modify the suspension term of the Division Default Orders and that Johnson and Lynn's hunting privileges are to be reinstated effective April 22, 2007.

The Court Orders were entered when there were already existing Division

Default Orders which revoked Johnson's big game hunting privileges for fourteen years and Lynn's big game hunting privileges for twenty-one years. Therefore, the only plausible reason for Johnson and Lynn to move the Trial Court, in December, 2004, for an Order declaring their hunting privileges be suspended until April 22, 2007, is because it was the intent of Johnson, Lynn and the Prosecutor, that the Court Orders would "trump" the existing Division suspensions.

Furthermore, Judge Lee in his Memorandum Decision incorrectly cites Utah Code Ann. 23-19-9(6)(c) in rationalizing that the Court Orders and the Division Default Orders may run consecutively. [R. at 127, 268 and Pleading Copies at Addendum 5 and 6]. However, Judge Lee's interpretation of said statute is incorrect. As will be more fully discussed and analyzed herein, a Court is required to look to a statutes **plain language** to determine the statutes **meaning and intent**.

Utah Code Ann. §23-19-9(6)(c) [See Addendum 2 for copy of entire statute] specifically provides that if the **Division suspends hunting privileges** that have been **previously suspended** by a court, the suspensions **may** run consecutively. However, in interpreting the plain language of the statute, it only provides for consecutive suspensions if the court ordered suspension is entered and then a Division order is entered. In this matter, the Division Default Orders were entered

and then almost two and one-half years later, the Court Orders were entered. The sequence required in Utah Code Ann. §23-19-9(6)(c) does not apply to the facts of this case. Therefore, Judge Lee's interpretation of this statute is flawed and is a clear abuse of discretion.

Also, if it was the intent of the Legislature to allow suspensions to run consecutively when a Division suspension is entered first and then a court ordered suspension is entered, then the Legislature would be required to include such language in the statute. The plain language of Utah Code Ann. §23-19-9(6)(c) does not allow for consecutive suspensions when there is first a Division suspension and then a court ordered suspension.

Therefore, the only realistic interpretation of the Court Orders is that they modify the suspension term of the Division Default Orders. The Court Orders entered on or about January 25, 2005 require that the existing suspensions remain in place for an additional two years three months until April 22, 2007. Consequently, the time line surrounding the entry of the Court Orders only substantiates that the Court Orders were meant to reinstate the Defendant's hunting privileges on or after April 22, 2007.

For the reasons stated herein, Judge Lee's interpretation of the Court Order's

is clearly flawed and is a “clear abuse of discretion” since he incorrectly cited critical facts which lead to the wrong conclusion and he also ignored the “plain language” of Utah Code Ann. §23-19-9(6)(c) in reasoning that the Court Order and the Division Default Order could run consecutively when the “plain language” of the statute does not provide for this. Therefore, this Court must overturn Judge Lee’s ruling that the Court Orders do not require the Division to do anything and rule that said Court Orders do require the Division to reinstate the hunting privileges of Johnson and Lynn as provided in Utah Code Ann. §23-19-9.1.

ARGUMENT II

THE TRIAL COURT ERRED IN INTERPRETING THE STATUTORY PROVISIONS OF UTAH CODE ANN. §23-19-9.1 and UTAH CODE ANN. §23-19-9 BY HOLDING THAT UTAH CODE ANN. §23-19-9.1 DID NOT REQUIRE THE DIVISION OF WILDLIFE SERVICES TO REINSTATE THE HUNTING PRIVILEGES OF JOHNSON AND LYNN AND THAT UTAH CODE ANN. §23-19-9 PROVIDED FOR CONSECUTIVE SUSPENSIONS IN THIS MATTER.

As outlined above, the Court Orders entered on or about January 25, 2005 are clearly meant to modify the term of the suspension of the Division Default Orders and as such Johnson and Lynn’s hunting privileges must be reinstated. The language in the Court Orders is clear. The Defendants’ hunting privileges are suspended until April 22, 2007, and as such, after that date, the Division is required to reinstate Johnson and Lynn’s hunting privileges. The Trial Court’s analysis and ruling in its Memorandum Decision is contrary to the “plain meaning” of the statutes. Since this issue involves statutory

interpretation, the standard of review is one of correctness, without according deference to the Trial Court's legal conclusions. Bonham v. Morgan, 788 P.2d 497, 499 (Utah 1989).

The applicable statutory provisions are Utah Code Ann. §23-19-9.1 and §23-19-9 which are included in full text at Addendum 1 and 2 respectively. The relevant portions of said statutes are cited below with emphasis added:

23-19-9.1. Court-ordered action against a license.

The division **shall** promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter is so ordered by a court.

23-19-9. Suspension of license or permit privileges- Suspension of certificates of registration.

(1) As used in this section, "license or permit privileges" means the privilege of applying for, purchasing, and exercising the benefits conferred by a license or permit issued by the division.

(2) A hearing officer, appointed by the division **may** suspend a persons' license or permit privileges if:

(a) in a court of law, the person:

(l) is convicted of:

(A) violating this title or a rule of the Wildlife Board. . .

(6) (a) A hearing officer **may** suspend, according to Subsection (2), a person's license or permit privileges for a particular license or permit only once for each single criminal episode, as defined in Section 76-1-401.

(b) If a hearing officer addresses two or more single criminal episodes in a hearing, the suspension periods of any license or permit privileges of the same type suspended, according to Subsection (2), may run consecutively.

(c) If a hearing officer suspends, according to Subsection (2), license or permit privileges of the type that have been **previously suspended by a court**, a hearing officer, or the Wildlife Board and the suspension period has not expired, the suspension periods **may run consecutively**.

(9) (a) The courts may suspend, in **criminal sentencing**, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

(b) The courts shall promptly notify the division of any suspension orders or recommendations entered.

(c) The division, upon receiving notification of suspension from the courts, shall prohibit the person from applying for, purchasing, or exercising the benefits conferred by a license, permit, or certification of registration for the duration and of the type specified in the court order.

(d) The hearing officer shall consider any recommendation made by a sentencing court concerning suspension before issuing a suspension order.

A. The Trial Court in its analysis and interpretation of both Utah Code Ann. §23-19-9.1 and Utah Code Ann. §23-19-9 is required to look to the statutes plain language.

In interpreting both Utah Code Ann. §23-19-9 and Utah Code Ann. §23-19-19.1, the well established rules of statutory interpretation apply. Sullivan v. Scoular Grain Co of Utah, 853 P.2d 877, 880 (Utah 1993). The rules require that a court must first look to the plain language of the statute to determine and give effect to its meaning and intent. Id. "The plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and with other statutes under the same

and related chapters.” Only if the statute’s language is ambiguous, do you look beyond the statute to determine the statute’s meaning. State v. Burns, 4 P.3d 795 (Utah 2000). When the statute “is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction.” Hanchett v. Burbidge, 202 P. 377, 380 (1921).

I. **The plain language of Utah Code Ann. §23-19-9.1 requires that the Division reinstate Johnson and Lynn’s hunting privileges.**

Judge Lee in his Memorandum Decision ignored the plain language of Utah Code Ann. §23-19-9.1 by incorrectly ruling that said statute did not even apply. As previously argued, there is absolutely no logic or purpose for the Court Orders to even reference that Johnson and Lynn’s hunting privileges are suspended until April 22, 2007, if said provision was not meant to reinstate all hunting privileges effective April 22, 2007. It is clear that the Court Orders are orders modifying the suspension term of the Division Default Orders and they direct the Division to reinstate the hunting privileges of the Johnson and Lynn effective April 22, 2007.

Utah Code Annotated §23-9-9.1 is captioned “**Court-ordered action against a license**” and it requires that the Division of Wildlife Resources to comply with court orders and reads as follows:

The division **shall** promptly **withhold, suspend, restrict, or reinstate** the use of a license issued under this chapter if so ordered by a court [emphasis added]. [See Statute Copy at Addendum 1].

It is clear from the language of Utah Code Ann. §23-19-9.1, that the Legislature

intended that the Courts be the final decision makers in reference to withholding, suspending, restricting or reinstating hunting privileges. The language of the statute removes all Division discretion and specifically states that the Division “shall” comply with court orders. If the Legislature was inclined to give the Division discretion as to whether they were to comply with court orders, then in Utah Code Ann. §23-19-9.1, the Legislature would have inserted the word “may” in place of the word “shall.”

- ii. **The plain language of Utah Code Ann. §23-19-9 when read in conjunction with Utah Code Ann §23-19-9.1 further confirms that the Division is required to reinstate Johnson and Lynn’s hunting privileges.**

As provided in Sullivan at 880, the Courts, in this matter, are required to look to Utah Code Ann. §23-19-9, which is related statute, and interpret Utah Code Ann. §23-19-9 and §23-19-9.1 in “harmony.”

Utah Code Ann §23-19-9 is titled “Suspension of license or permit privileges - Suspension of certificates of registration.” Utah Code Ann. §23-19-9 primarily consists of guidelines and rules of how and when hunting licenses and privileges are suspended as well as the penalties for violating hunting restrictions. The two relevant statutory provisions, to this matter, are contained in Utah Code Ann. §23-19-9 are sub-section (6) and (9). [See Addendum 2 for copy of full statute].

Utah Code Ann. §23-19-9(6)(c) is a related statute to Utah Code Ann. §23-19-9.1 and therefore, these two statutes must be interpreted in harmony with each

other. Utah Code Ann. §23-19-9(6)(c) has already been briefed and addressed above. It was clearly demonstrated that, in this matter, the Trial Court improperly ruled that suspension periods could run consecutively, which ruling is contrary to the statutory requirement that there first be a court suspension and then a division suspension. [See above argument at Page 21, R. at 126-128 and 267-269].

Furthermore, Utah Code Ann. §23-19-9(9) is a related statute to Utah Code Ann. §23-19-9.1, and therefore, the two statutes must be interpreted in harmony with each other. Utah Code Ann. §23-19-9(9) is printed below for ease of the reader.

(a) The courts may suspend, in **criminal sentencing**, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

(b) The courts shall promptly notify the division of any suspension orders or recommendations **entered**.

(c) The division, upon receiving notification of suspension from the courts, shall prohibit the person from applying for, purchasing, or exercising the benefits conferred by a license, permit, or certification of registration for the duration and of the type specified in the court order.

(d) The hearing officer shall consider any recommendation made by a sentencing court concerning suspension before issuing a suspension order.

The Divisions due process rights were not violated. The Division argues that their due process rights were violated since they were not provided copies of the

Motions and proposed Court Orders before they were signed which prohibited the Division from responding to said Motions. [R. at 70 and 196].

Utah Code Ann §23-19-9(9)(b) clearly allows courts to suspend hunting privileges and requires courts to “promptly notify the division of any suspension orders or recommendations.” However, the Court Orders in this matter are not technically suspensions. The Court Orders are not suspending Johnson and Lynn’s hunting privileges instead the Court is just modifying the suspension period of the existing Division suspension order.

In the alternative, even if this Court fashions the Court Orders as some sort of court ordered suspension, the Division’s due process rights were still not violated. The notification provision in Utah Code Ann. §23-19-9(9)(b) are required so that the Division can as provided in (9)(c) prohibit a person from applying, or purchasing, or exercising the benefits conferred by a license. Logically, notice is required for Court ordered suspensions because the Division would have no way of enforcing or knowing who to deny hunting privileges to if they were not notified of court suspensions.

However, even if the Trial Court had complied with notice requirements of Utah Code Ann. §23-19-9(9)(b), their notification would have been given to the

Division after the **entry** of the suspension order and the Division still would not have been an opportunity to object to the Court Orders prior to entry.

And finally, even if the Division should have been given notice as provided for under Utah Code Ann. §23-19-9(9), there is no statutory provisions allowing the Division to object to or chose not to comply with a court ordered suspension or recommendation. The only discretion that the Division is given is found in (9)(d) which states that Divisions “shall” consider recommendations of the Court regarding suspension. However, in this matter, it cannot even be argued that the Court Orders are recommendations since they specifically state that the Defendant’s hunting privileges are suspended until April 22, 2007.

“Reinstatement” does not require there be a court ordered suspension. The Division argues that Utah Code Ann. §23-19-9.1 is in a section that deals with court suspensions and that “Section §23-19-9.1 is confined to the termination or expiration of the court’s order of suspension.” [R. at 72 and 198]. The Division further argues that “Section 23-19.1 does not, however, grant courts authority to alter administrative suspensions outside a jurisdictionally recognized appeal process. [R. at 72 and 198]. However, according to the plain language of Utah Code Ann. §23-19-9.1, this reasoning is incorrect.

First, the Division asserts that just because Utah Code Ann. §23-19-9 deals with “suspensions,” that Utah Code Ann. §23-19-9.1 must also only deal with court ordered suspensions. [R. At 65-76 and 191-202]. This is not the case. The statute heading for Utah Code Ann. §23-19-9.1 states “Court-ordered action against a license” and no reference or implication is made in the heading or the statute indicating that “reinstatements” can only apply to court ordered suspensions. This statute quite simply requires the Division to “withhold, suspend, restrict, or reinstate” if ordered by a Court. Therefore, the “plain language” in Utah Code Ann. §23-19-9.1 is not restricted to only court ordered suspension.

Next, the Division argues that Utah Code Ann. §23-19-9.1 doesn’t grant courts authority to alter administrative suspensions. [R. At 65-76 and 191-202]. However, Utah Code Ann. §23-19-9.1 does require the Division to “withhold, suspend, restrict, or reinstate” hunting privileges if so ordered by a Court. There is no specific statutory language outlining when a Court can or should “withhold, suspend, restrict, or reinstate” hunting privileges. Therefore, the statutes “plain language” would logically mean that court actions, in relation to hunting privileges, are at the discretion of the Court and no specific reference allowing courts to alter administrative suspensions is required.

Since the Division is required to follow court orders and there is no statutory authority to the contrary, then a court can alter administrative suspensions. The **plain meaning** of the statute holds that courts basically have all of the authority and the Division is required to comply with all court orders. The only discretion that the Division is given is contained in Utah Code Ann. §23-19-9(9)(d) which requires that the hearing officer “shall consider any recommendations” before issuing a suspension order.

Even if a particular application under Utah Code Ann. §23-19-9.1 is not contemplated by the Legislature, a Court must still give it effect. The Division argues that there is no intent that the Legislature intended to “authorize courts in criminal sentencing to summarily preempt and supplant administrative suspensions by simply electing to issue a separate suspension order. “ [R. at 65-76 and 191-202].

In interpreting a statute, the best evidence of the legislature’s intent is the plain language of the statute itself, Housekeeper v. State, 2008 UT 78. When interpreting a statute, courts presume that the legislature used each word advisedly and give effect to each term according to its ordinary and accepted meaning. State v. Low, 192 P.3d 867, 869 (Utah 2008). Therefore, this Court in interpreting the statutory provisions of Utah Code Ann. §23-19-9.1 must presume that the Legislature carefully

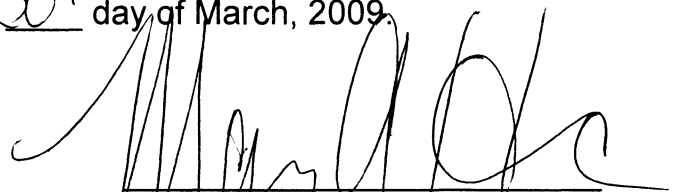
used the words “withhold, suspend, restrict, or reinstate” and that the Legislature vested the courts with authority to issue any order in reference to “withholding, suspending, restricting, or reinstating” hunting privileges.

If there is a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators. Barr v. United States, 324 U.S. 83, 90, (1945). Even if it is argued that the Utah Legislature did not intend for a criminal court to override a Division suspension order, the plain language of Utah Code Ann. §23-19-9.1 prevails and as such Johnson and Lynn’s hunting privileges must be reinstated.

CONCLUSION

Based upon the foregoing, this Court must reverse the Memorandum Decision of the Trial Court and order that the Division of Wildlife Resources immediately reinstate all hunting privileges of Gregg C. Johnson and Kerry E. Lynn.

RESPECTFULLY SUBMITTED this 30th day of March, 2009.


MARY ANN HANSEN,
Attorney for Appellants

CERTIFICATE OF SERVICE

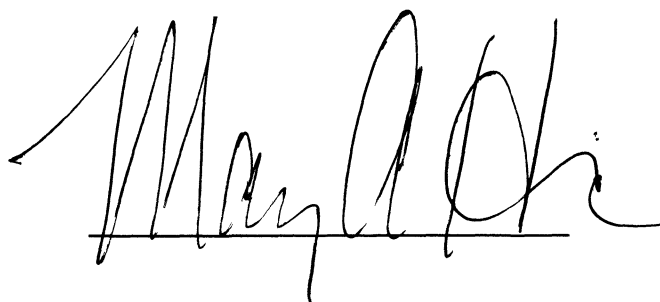
I HEREBY CERTIFY that on the 30th day of March, 2009, I caused to be mailed via first class U.S. Mail a true and correct copy of the foregoing Appellant's Brief to the following:

Original and seven copies filed with the Court of Appeals

Court of Appeals Clerk
450 South Main
Salt Lake City, UT 84114

Two copies to the following:

Assistant Attorney General
Brent A. Burnett
160 East 300 South, 5th Floor
Salt Lake City, UT 84111

A handwritten signature in black ink, appearing to read "May A. Burnett", is written over a horizontal line.

ADDENDUM INDEX

- Addendum 1. Utah Code Ann. §23-19-9.1
- Addendum 2. Utah Code Ann. §23-19.9
- Addendum 3. Notice to Submit for Gregg C. Johnson and
Order Granting 402B Motion for Gregg C. Johnson
- Addendum 4. Notice to Submit for Kerry E. Lynn and
Order Granting 402B Motion for Kerry E. Lynn
- Addendum 5. Memorandum Decision and Order for Gregg C. Johnson
- Addendum 6. Memorandum Decision and Order for Kerry E. Lynn
- Addendum 7. Court Docket for Gregg C. Johnson
Court Docket for Kerry E. Lynn
- Addendum 8. Motion for Order to Correct Clerical Oversight;
Memorandum of Points and Authorities in Support of Motion to
Correct Clerical Oversight; and
Order Correcting Clerical Oversight

EXHIBIT “1”

Utah Statutes

- └─ Utah Statutes
- └─ TITLE 23 WILDLIFE RESOURCES CODE
- └─ CHAPTER 19 LICENSES, PERMITS AND TAGS

23-19-9.1. Court-ordered action against a license.

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court

EXHIBIT “2”

→§ 23-19-9. Suspension of license or permit privileges--Suspension of certificates of registration

(1) As used in this section, "license or permit privileges" means the privilege of applying for, purchasing, and exercising the benefits conferred by a license or permit issued by the division.

(2) A hearing officer, appointed by the division, may suspend a person's license or permit privileges if:

(a) in a court of law, the person:

(i) is convicted of:

(A) violating this title or a rule of the Wildlife Board;

(B) killing or injuring domestic livestock while engaged in an activity regulated under this title; or

(C) violating Section 76-10-508 while engaged in an activity regulated under this title;

(ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

(iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person enters into a diversion agreement which suspends the prosecution of the offense; and

(b) the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly, as defined in Section 76-2-103.

(3)(a) The Wildlife Board shall make rules establishing guidelines that a hearing officer shall consider in determining:

(i) the type of license or permit privileges to suspend; and

(ii) the duration of the suspension.

(b) The Wildlife Board shall ensure that the guidelines established under Subsection (3)(a) are consistent with Subsections (4), (5), and (6).

(4) Except as provided in Subsections (5) and (6), a hearing officer may suspend a person's license or permit privileges according to Subsection (2) for a period of time not to exceed:

(a) seven years for:

(i) a felony conviction;

(ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a felony, the prosecution of which is suspended

pursuant to a diversion agreement;

(b) five years for:

(i) a class A misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class A misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement;

(c) three years for:

(i) a class B misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor when the plea is held in abeyance according to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class B misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement; and

(d) one year for:

(i) a class C misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor, when the plea is held in abeyance according to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class C misdemeanor, the prosecution of which is suspended according to a diversion agreement.

(5) The hearing officer may double a suspension period established in Subsection (4) for offenses:

(a) committed in violation of an existing suspension or revocation order issued by the courts, division, or Wildlife Board; or

(b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

(6)(a) A hearing officer may suspend, according to Subsection (2), a person's license or permit privileges for a particular license or permit only once for each single criminal episode, as defined in Section 76-1-401.

(b) If a hearing officer addresses two or more single criminal episodes in a hearing, the suspension periods of any license or permit privileges of the same type suspended, according to Subsection (2), may run consecutively.

(c) If a hearing officer suspends, according to Subsection (2), license or permit privileges of the type that have been previously suspended by a court, a hearing officer, or the Wildlife Board and the suspension period has not expired, the suspension periods may run consecutively.

(7)(a) A hearing officer, appointed by the division, may suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:

(i) the hearing officer determines the person intentionally, knowingly, or recklessly, as defined in Section 76-2-103, violated:

(A) this title;

(B) a rule or order of the Wildlife Board;

(C) the terms of a certificate of registration; or

(D) the terms of a certificate of registration application or agreement; or

(ii) the person, in a court of law:

(A) is convicted of an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration;

(B) pleads guilty or no contest to an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and the plea is held in abeyance in accordance with a plea in abeyance agreement; or

(C) is charged with an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and prosecution of the offense is suspended in accordance with a diversion agreement.

(b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the holder of the certificates of registration has violated Section 59-23-5.

(8)(a) The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section.

(b) The director may not appoint a division employee who investigates or enforces wildlife violations.

(9)(a) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

(b) The courts shall promptly notify the division of any suspension orders or recommendations entered.

(c) The division, upon receiving notification of suspension from the courts, shall prohibit the person from applying for, purchasing, or exercising the benefits conferred by a license, permit, or certification of registration for the duration and of the type specified in the court order.

(d) The hearing officer shall consider any recommendation made by a sentencing court concerning suspension before issuing a suspension order.

(10)(a) A person may not apply for, purchase, possess, or attempt to exercise the benefits conferred by any permit, license, or certificate of registration specified in an order of suspension while that order is in effect.

(b) Any license possessed or obtained in violation of the order shall be considered invalid.

(c) A person who violates Subsection (10)(a) is guilty of a class B misdemeanor.

(11) Before suspension under this section, a person must be:

(a) given written notice of any action the division intends to take; and

(b) provided with an opportunity for a hearing.

(12)(a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing.

(c) The Wildlife Board may:

(i) take no action;

(ii) vacate or remand the decision; or

(iii) amend the period or type of suspension.

(13) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

(14) The Wildlife Board may make rules to implement this section in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

CREDIT(S)

Laws 2001, c. 224, § 1, eff. April 30, 2001, Laws 2007, c. 136, § 4, eff. April 30, 2007, Laws 2008, c. 382, § 277, eff. May 5, 2008

HISTORICAL AND STATUTORY NOTES

Prior Laws.

Laws 1992, c. 260, § 1.

Laws 1995, c. 63, § 1.

Laws 1995, c. 211, § 17.

Laws 1997, c. 179, § 1.

Laws 1998, c. 13, § 18.

CROSS REFERENCES

Attempt, elements and classification, see §§ 76-4-101 and 76-4-102.

Conspiracy and solicitation, elements and penalties, see § 76-4-201 et seq.

Fines upon conviction of misdemeanor or felony, see § 76-3-301.

Inchoate offenses, limitations on sentencing, see §§ 76-4-301 and 76-4-302.

Penalties for misdemeanors, see § 76-3-204.

LIBRARY REFERENCES

Fish ⇌ 10(1).

Game ⇌ 5.

Westlaw Key Number Searches: 176k10(1); 187k5.

U.C.A. 1953 § 23-19-9, UT ST § 23-19-9

Current through 2008 Second Special Session, including results from the November 2008 General Election.

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EXHIBIT “3”

MARY ANN HANSEN (5200)
HARRIS & CARTER
COUNSEL FOR DEFENDANT
3325 NORTH UNIVERSITY AVENUE, SUITE 200
PROVO, UTAH 84604
Telephone (801) 375-9801
Facsimile (801) 377-1149

TN

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	NOTICE TO SUBMIT
Plaintiff,	:	
	:	
vs.	:	
	:	
GREG C. JOHNSON,	:	CASE NO. 011600026
	:	
Defendant.	:	Judge: K.L. MCIFF

The following pleadings are now at issue and ready for decision of the Court:

PLEADING FILED: Motion to Reduce Categorization of Offense.

BY: Mary Ann Hansen, counsel of record for the Plaintiff.

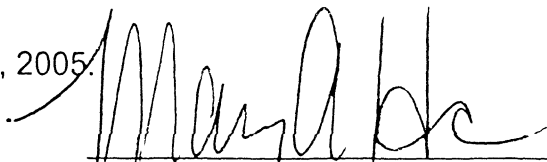
DATE MAILED TO STATE OF UTAH: On or about December 28, 2004.

RESPONSIVE PLEADING FILED: None.

BY: N/A

DATE: N/A

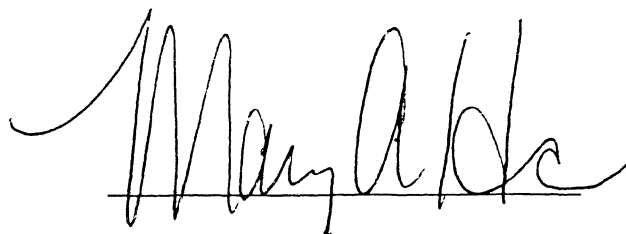
DATED this 18th day of January, 2005.


Mary Ann Hansen
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January, 2005, I caused a true and correct copy of the foregoing NOTICE TO SUBMIT FOR DECISION to be deposited in the U.S. mail, postage prepaid, for delivery to the following:

Marvin Bagley
Wayne County Attorney
180 North 100 East #F
Richfield, UT 84701



Approved
Marvin D. Bagley
1-24-05

MARY ANN HANSEN (5200)
HARRIS & CARTER
COUNSEL FOR DEFENDANT
3325 NORTH UNIVERSITY AVENUE, SUITE 200
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TN

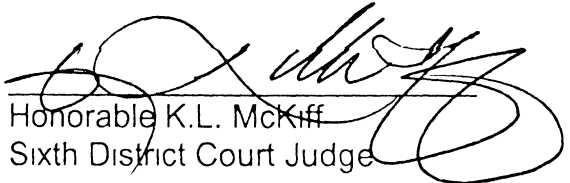
IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	ORDER GRANTING 402 MOTION
Plaintiff,	:	
	:	
vs.	:	
	:	
GREG C. JOHNSON,	:	CASE NO. 011600026
	:	
Defendant.	:	Judge: K.L. MCIFF

THIS MATTER having come before the Court on the Defendant's Motion to Enter a 402 Reduction of Conviction, the Court having reviewed the file and being duly advised in the premises hereby grants Defendant's Motion and Orders that the judgment entered convicting Defendant of a Third Degree Felony is hereby reduced to a conviction of a Misdemeanor simple attempted wanton destruction of protected wildlife. Additionally, Defendant's hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction.

DATED AND SIGNED this 24 day of January, 2005.

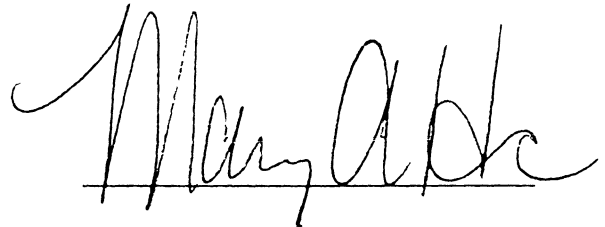
BY THE COURT:


Honorable K.L. McKiff
Sixth District Court Judge

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 18th day of January, 2005, by first-class, U.S. Mail, postage prepaid to the following:

Marvin Bagley
Wayne County Attorney
180 North 100 East #F
Richfield, UT 84701



NOTICE

The foregoing Order has been submitted to the Court for execution and entry. Pursuant to Utah Rules of Civil Procedure 7(f)(2), any objection as to the form of the order should be filed with the Court, within five days after service upon you of this notice.

DATED this 18th day of January, 2005.

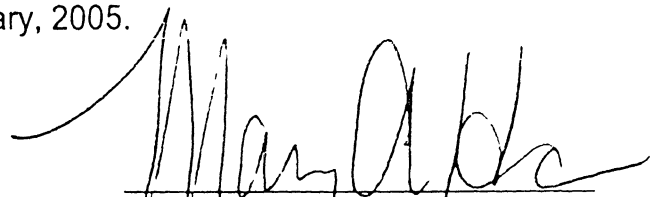

MARY ANN HANSEN,
Attorney for Plaintiff

EXHIBIT “4”

MARY ANN HANSEN (5200)
HARRIS & CARTER
COUNSEL FOR DEFENDANT
3325 NORTH UNIVERSITY AVENUE, SUITE 200
PROVO, UTAH 84604
Telephone (801) 375-9801
Facsimile (801) 377-1149

TN

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	NOTICE TO SUBMIT
Plaintiff,	:	
	:	
vs.	:	
	:	
KERRY E. LYNN,	:	CASE NO. 011600027
	:	
Defendant.	:	Judge: K.L. MCIFF

The following pleadings are now at issue and ready for decision of the Court:

PLEADING FILED: Motion to Reduce Categorization of Offense.

BY: Mary Ann Hansen, counsel of record for the Plaintiff.

DATE MAILED TO STATE OF UTAH: On or about December 28, 2004.

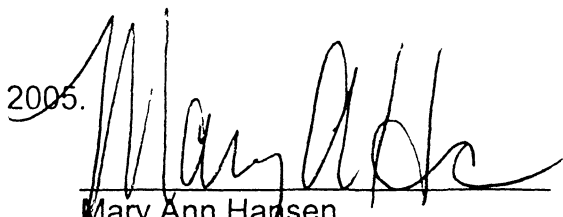
RESPONSIVE PLEADING FILED: None.

BY: N/A

175

DATE: N/A

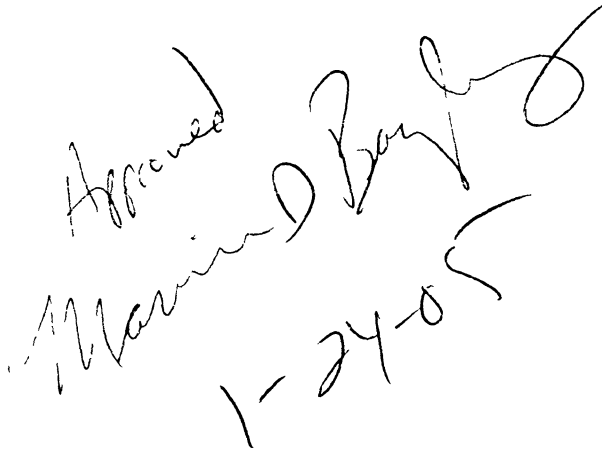
DATED this 18th day of January, 2005.

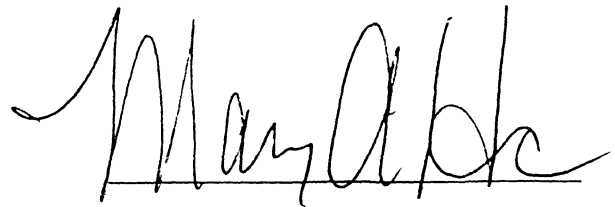

Mary Ann Hansen
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January, 2005, I caused a true and correct copy of the foregoing NOTICE TO SUBMIT FOR DECISION to be deposited in the U.S. mail, postage prepaid, for delivery to the following:

Marvin Bagley
Wayne County Attorney
180 North 100 East #F
Richfield, UT 84701


Approved
Marvin Bagley
1-24-05



MARY ANN HANSEN (5200)
HARRIS & CARTER
COUNSEL FOR DEFENDANT
3325 NORTH UNIVERSITY AVENUE, SUITE 200
PROVO, UTAH 84604
Telephone (801) 375-9801
Facsimile (801) 377-1149

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	ORDER GRANTING 402 MOTION
Plaintiff,	:	
	:	
vs.	:	
	:	
KERRY E. LYNN,	:	CASE NO. 011600027
	:	
Defendant.	:	Judge: K.L. MCIFF

THIS MATTER having come before the Court on the Defendant's Motion to Enter a 402 Reduction of Conviction, the Court having reviewed the file and being duly advised in the premises hereby grants Defendant's Motion and Orders that the judgment entered convicting Defendant of a Third Degree Felony is hereby reduced to a conviction of a Misdemeanor simple attempted wanton destruction of protected wildlife. Additionally, Defendant's hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction.

~~DATED AND SIGNED~~ this ____ day of January, 2005.

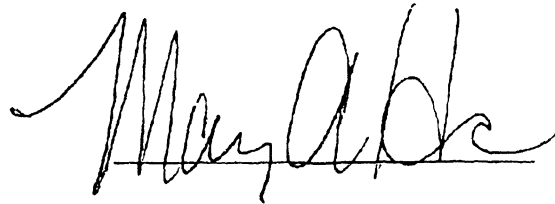
BY THE COURT:

Honorable K.L. McKiff
Sixth District Court Judge

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 18th day of January, 2005, by first-class, U.S. Mail, postage prepaid to the following:

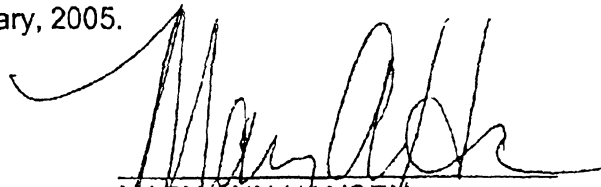
Marvin Bagley
Wayne County Attorney
180 North 100 East #F
Richfield, UT 84701



NOTICE

The foregoing Order has been submitted to the Court for execution and entry. Pursuant to Utah Rules of Civil Procedure 7(f)(2), any objection as to the form of the order should be filed with the Court, within five days after service upon you of this notice.

DATED this 18th day of January, 2005.



MARY ANN HANSEN,
Attorney for Plaintiff

EXHIBIT “5”



RECEIVED

JUL 17 2008

8TH DISTRICT COURT
CLERK TV**DISTRICT COURT, STATE OF UTAH
WAYNE COUNTY**Wayne County Courthouse, Loa, Utah 84747
Telephone: (435) 836-1301; Facsimile: (435) 836-2479**STATE OF UTAH,**

Plaintiff,

vs.

GREG C. JOHNSON,

Defendant.

**MEMORANDUM DECISION AND
ORDER**Case No. **011600026**

Assigned Judge: Wallace A. Lee

The pending motion in this case is the defendant's Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Greg C. Johnson filed on 30 July 2007. The Division of Wildlife Resources ("the Division") filed a memorandum in opposition on 6 August 2007. The defendant responded on 24 January 2008. Oral arguments on the Motion were heard on 27 May 2008. The Court took the Motion under advisement. It is now ready for a decision.

DECISION

The defendant's Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Greg C. Johnson should be denied.

ANALYSIS

The defendant argues his hunting privileges and licenses should be reinstated as a result

of the Order of this Court entered on 25 January 2005. That order suspended the defendant's hunting privileges until 22 April 2007, which is a period of five years from the date of conviction.

At or about the same time, the Division administratively suspended the defendant's hunting privileges for twenty one (21) years from the date of his conviction. The defendant insists the Division's administrative action is contrary to the 25 January 2005 Order of this Court. He argues the Court's Order should "trump" the Division's administrative process because the Court is the final decision maker when it comes to suspension of hunting privileges.

The defendant cites Utah Code Annotated Section 23-19-9.1 in support of his argument. That section reads as follows: "[t]he division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court."

The Court finds the 25 January 2005 Order of this Court did not direct the Division to do anything. Thus, Section 23-19-9.1 does not apply in this case.

Further, the Court finds if there is a court order suspending hunting privileges and a similar administrative order entered by the Division, these orders may run consecutively. See Utah Code Annotated, Section 23-19-9(6)(c).

The Court concludes there is no basis in this case to require the Division to change its

administrative order concerning suspension of the defendant's hunting privileges. Consequently,
the defendant's Motion should be denied.

CONCLUSION AND ORDER

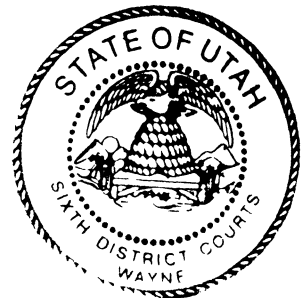
The defendant's Motion for Order Requiring Division of Wildlife Resources to Reinstate
the Hunting Privileges and Licenses of Greg C. Johnson is denied.

DATED this 17 July, 2008.

Wallace A Lee

Digitally signed by Wallace A Lee
DN: cn=Wallace A Lee, c=US, o=TrustID personal certificate
ou=Utah, email=wlee@email.utcourts.gov
Reason: I am approving this document
Date: 2008.07.17 10:52:22 -0600

WALLACE A. LEE, Judge



128

CERTIFICATE OF SERVICE

On _____, 200__, a copy of the above document was sent to the following by the method indicated:

<u>Addressee</u>	<u>Method</u>
<input checked="" type="checkbox"/> Martin V. Bushman Assistant Attorney General UTAH ATTORNEY GENERAL'S OFFICE Attorney for Utah Division of Wildlife Resources 1594 West North Temple, Suite 2110 Salt Lake City, Utah 84114-6301	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Courthouse box
<input checked="" type="checkbox"/> Mary Ann Hansen Attorney for Defendant 852 North 910 East Orem, Utah 84097	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Courthouse box

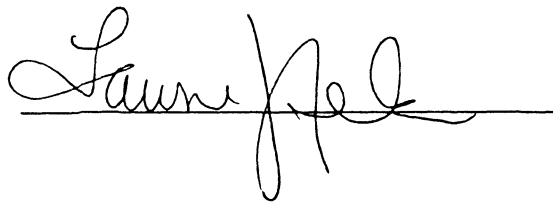


EXHIBIT “6”



CD23249689

pages: 4

011600027 LYNN, KERRY EUGENE

RECEIVED

JUL 17 2008

6TH DISTRICT COURT
CLERK — IN —**DISTRICT COURT, STATE OF UTAH
WAYNE COUNTY**Wayne County Courthouse, Loa, Utah 84747
Telephone (435) 836-1301, Facsimile (435) 836-2479

STATE OF UTAH,

Plaintiff,

vs

KERRY E. LYNN,

Defendant

**MEMORANDUM DECISION AND
ORDER**

Case No 011600027

Assigned Judge Wallace A Lee

The pending motion in this case is the defendant's Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Kerry E Lynn filed on 30 July 2007. The Division of Wildlife Resources ("the Division") filed a memorandum in opposition on 6 August 2007. The defendant responded on 24 January 2008. Oral arguments on the Motion were heard on 27 May 2008. The Court took the Motion under advisement. It is now ready for a decision.

DECISION

The defendant's Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Kerry E Lynn should be denied.

ANALYSIS

The defendant argues his hunting privileges and licenses should be reinstated as a result

of the Order of this Court entered on 24 January 2005. That order suspended the defendant's hunting privileges until 22 April 2007, which is a period of five years from the date of conviction.

At or about the same time, the Division administratively suspended the defendant's hunting privileges for twenty one (21) years from the date of the conviction. The defendant insists the Division's administrative action is contrary to the 24 January 2005 Order of this Court. He argues the Court's Order should "trump" the Division's administrative process because the Court is the final decision maker when it comes to suspension of hunting privileges.

The defendant cites Utah Code Annotated Section 23-19-9.1 in support of his argument. That section reads as follows: "[t]he division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court."

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The Court concludes there is no basis in this case to require the Division to change its

administrative order concerning suspension of the defendant's hunting privileges. Consequently, the defendant's Motion should be denied.

CONCLUSION AND ORDER

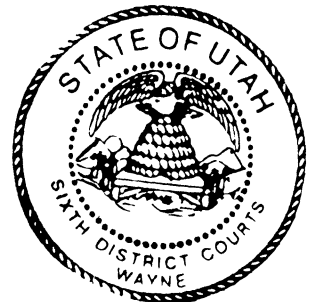
The defendant's Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Kerry E. Lynn is denied.

DATED this 17 July, 2008.

Wallace A Lee

Digitally signed by Wallace A Lee
DN: cn=Wallace A Lee, c=US, o=TrustID personal
certificate, ou=Utah, email=wlee@email.utcourts.gov
Reason: I am approving this document
Date: 2008.07.17 10:53:53 -0600

WALLACE A. LEE, Judge



CERTIFICATE OF SERVICE

On 7/17, 2008, a copy of the above document was sent to the following by the method indicated

<u>Addressee</u>	<u>Method</u>
<input checked="" type="checkbox"/> Martin V. Bushman Assistant Attorney General UTAH ATTORNEY GENERAL'S OFFICE Attorney for Utah Division of Wildlife Resources 1594 West North Temple, Suite 2110 Salt Lake City, Utah 84114-6301	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Courthouse box
<input checked="" type="checkbox"/> Mary Ann Hansen Attorney for Defendant 852 North 910 East Orem, Utah 84097	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input type="checkbox"/> Courthouse box

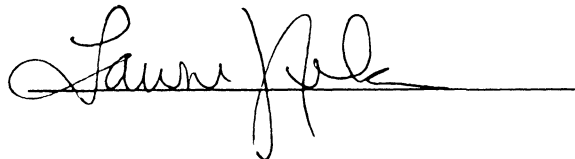


EXHIBIT “7”

SIXTH JUDICIAL DISTRICT - Loa
WAYNE COUNTY, STATE OF UTAH

STATE OF UTAH vs. GREG C JOHNSON

CASE NUMBER 011600026 State Felony

Defendants GREG C JOHNSON, KERRY EUGENE LYNN, are linked.

Trust Accounts are jointly and severally linked with accounts
on cases: 011600027

CHARGES

Charge 1 - 23-20-4 - ATTEMPTED WANTON DESTRUCTION OF PROTECTED
WILDLIFE 3rd Degree Felony (amended) to Class A Misdemeanor

Offense Date: October 28, 2001

Plea: January 29, 2002 Not Guilty

Disposition: April 22, 2002 Guilty

Charge 2 - 23-20-4 - WANTON DESTRUCTION OF PROTECTED WILDLIFE
3rd Degree Felony

Offense Date: October 28, 2001

Plea: January 29, 2002 Not Guilty

Disposition: April 22, 2002 Dismissed

Charge 3 - 41-22-3 - NO OFF ROAD VEHICLE REGISTRATION Class B
Misdemeanor

Offense Date: October 28, 2001

Plea: January 29, 2002 Not Guilty

Disposition: April 22, 2002 Dismissed

Charge 4 - 41-1A-201 - DRIVE WITHOUT REGISTRATION Class C
Misdemeanor

Offense Date: October 28, 2001

Plea: January 29, 2002 Not Guilty

Disposition: April 22, 2002 Dismissed

CURRENT ASSIGNED JUDGE

WALLACE A LEE

PARTIES

Plaintiff - STATE OF UTAH

Represented by: MARVIN D BAGLEY

Defendant - GREG C JOHNSON

Represented by: MARY ANN HANSEN

DEFENDANT INFORMATION

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Page 1

CASE NUMBER 011600026 State Felony

Defendant Name: GREG C JOHNSON
Offense tracking number: 14390413
Date of Birth: October 25, 1977
Law Enforcement Agency: WILDLIFE RESOURCES
Prosecuting Agency: WAYNE COUNTY
Arrest Date: October 28, 2001

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	96.00
	Amount Paid:	96.00
	Credit:	0.00
	Balance:	0.00

PAPER BOND TOTALS	Posted:	5,000.00
	Forfeited:	0.00
	Exonerated:	5,000.00
	Balance:	0.00

TRUST TOTALS	Trust Due:	9,444.98
	Amount Paid:	3,200.00
	Credit:	6,244.98
	Trust Balance Due:	0.00
	Balance Payable:	0.00

REVENUE DETAIL - TYPE: REPORTER FEES

	Amount Due:	87.50
	Amount Paid:	87.50
	Amount Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: REPORTER FEES

	Amount Due:	8.50
	Amount Paid:	8.50
	Amount Credit:	0.00
	Balance:	0.00

NONMONETARY BOND DETAIL - TYPE: Surety

	Posted By:	BEEHIVE BAIL BONDS
	Posted:	5,000.00
	Forfeited:	0.00
	Exonerated:	5,000.00
	Balance:	0.00

TRUST DETAIL

Trust Description:	Interest on Rstitutn
Recipient:	DIVISION OF WILDLIFE RESOURCES

Printed: 03/29/09 20:56:42

Page 2

CASE NUMBER 011600026 State Felony

Amount Due:	444.98
Paid In:	444.98
Paid Out:	444.98

Account Adjustments

Date	Amount	Reason
Jun 30, 2004	563.61	Interest Posted to Date
Jan 18, 2005	-118.63	As per Order signed from Judge K. L. McIff on 1/11/05

TRUST DETAIL

Trust Description: Other Trust

Recipient: MARVIN D BAGLEY WAYNE COUNTY ATTORNEY

Amount Due:	1,000.00
Paid In:	1,000.00
Paid Out:	1,000.00

TRUST DETAIL

Trust Description: Restitution

Recipient: DIVISION OF WILDLIFE RESOURCES

Amount Due:	8,000.00
Credit:	6,244.98
Paid In:	1,755.02
Paid Out:	1,755.02

PROCEEDINGS

11-19-01 Filed: Request for Discovery
 11-19-01 Filed: Notice of Appearance Entry of Plea and Request for Jury Trial
 11-29-01 Case filed
 11-29-01 Filed: From an Information
 11-29-01 Filed: Notice to Appear
 11-29-01 Filed: Discovery Submittal
 11-29-01 Filed: Information
 11-30-01 Judge K L MCIFF assigned.
 11-30-01 Bond Account created Total Due: 5000.00
 11-30-01 Bond Posted Non-Monetary Bond: 5,000.00
 11-30-01 INITIAL APPEARANCE scheduled on December 21, 2001 at 02:00 PM with Judge MOWER.
 12-14-01 INITIAL APPEARANCE Cancelled.
 Reason: Plaintiff's request
 12-14-01 INITIAL APPEARANCE scheduled on January 28, 2002 at 02:00 PM with Judge MCIFF.
 12-14-01 Filed: Amended Notice to Appear
 01-28-02 Minute Entry -
 Judge: K L MCIFF
 PRESENT
 Clerk: tawnin

CASE NUMBER 011600026 State Felony

Prosecutor: BAGLEY, MARVIN D.
Defendant
Defendant's Attorney(s): HANSEN, MARY ANN

Audio
Tape Number: 12802 Tape Count: 478-526

INITIAL APPEARANCE

The defendant requests a Preliminary Hearing.
Parties have agreed to set the case for preliminary hearing on Feb.
25, 2002 at 2:00 p.m. to follow Law & Motion on that day. Judge
explains to the defendants about the preliminary hearing.
PRELIMINARY HEARING is scheduled.

Date: 02/25/2002

Time: 02:00 p.m.

before Judge DAVID L. MOWER

01-28-02 PRELIMINARY HEARING scheduled on February 25, 2002 at 02:00 PM
with Judge MOWER.

01-29-02 Charge 1 Plea is Not Guilty

01-29-02 Charge 2 Plea is Not Guilty

01-29-02 Charge 3 Plea is Not Guilty

01-29-02 Charge 4 Plea is Not Guilty

01-29-02 Notice - NOTICE for Case 011600026 ID 1269369

PRELIMINARY HEARING is scheduled.

Date: 02/25/2002

Time: 02:00 p.m.

before Judge DAVID L. MOWER

01-30-02 Filed: Notice of Preliminary Hearing

02-06-02 Notice - NOTICE for Case 011600026 ID 1273971

PRELIMINARY HEARING is re-scheduled.

Date: 03/25/2002

Time: 02:00 p.m.

Before Judge: K L MCIFF

The reason for the change is Conflict in attorney schedule.

02-06-02 PRELIMINARY HEARING rescheduled on March 25, 2002 at 02:00 PM
Reason: Conflict in attorney schedule.

02-06-02 Filed: Notice of Preliminary Hearing

03-15-02 Filed: Amended Notice of Hearing

03-15-02 PRELIMINARY HEARING scheduled on April 22, 2002 at 02:00 PM
with Judge MOWER.

03-20-02 PRELIMINARY HEARING scheduled on April 22, 2002 at 02:00 PM
with Judge MOWER.

03-20-02 PRELIMINARY HEARING Cancelled.

04-22-02 Minute Entry - Minutes for Preliminary Hearing

Judge: DAVID L. MOWER

PRESENT

Clerk: tawnin

Prosecutor: BAGLEY, MARVIN D.

Defendant
Defendant's Attorney(s): HANSEN, MARY ANN

Audio
Tape Number: 42202 Tape Count: 38-586

HEARING

TAPE: 42202 COUNT: 38-586

Judge calls the case. Case is scheduled for preliminary hearing. Parties have reached an agreement. This case has a companion case with Kerry Lynn case #011600027. Defendants will plead guilty to count 1 and dismiss counts 2,3, & 4.

Defendants reside in Juab County. Defendants will pay restitution joint and severally \$8,000.00. One 4-wheeler and 2 guns have to be purchased back from DWR. Defendants will be on probation for 2 years. Judge gives defendants their rights & penalties.

Judge questions defendants about October 20, 2001, and what happened on this day. Judge accepts their plea. Other counts are dismissed. Defendants will be unsupervised probation by the court.

State is to notify DWR that the parties are interested in buying their property back.

SENTENCE PRISON

Based on the defendant's conviction of WANTON DESTRUCTION OF PROTECTED WILDLIFE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

The prison term is suspended.

SENTENCE JAIL

Based on the defendant's conviction of WANTON DESTRUCTION OF PROTECTED WILDLIFE a 3rd Degree Felony, the defendant is sentenced to a term of 20 day(s)

SENTENCE FINE

Charge # 1 Fine: \$9250.00
Suspended: \$9250.00
Surcharge: \$

Total Fine: \$9250.00
Total Suspended: \$9250.00
Total Surcharge: \$0
Total Principal Due: \$0
Plus Interest

SENTENCE TRUST

The defendant is to pay the following:

Restitution: Amount: \$8000.00 Plus Interest
Pay in behalf of: DIVISION OF WILDLIFE RESOURCES

The amount of Restitution
 This restitution is to be paid joint and severally with the
 co-defendants.
 ORDER OF PROBATION

The defendant is placed on probation for 2 year(s).
 Probation is to be supervised by DISTRICT COURT.
 Defendant to serve 20 day(s) jail.

Defendant is to pay a fine of 0

04-22-02	Charge 1	Disposition is Guilty	
04-22-02	Charge 2	Disposition is Dismissed	
04-22-02	Charge 3	Disposition is Dismissed	
04-22-02	Charge 4	Disposition is Dismissed	
04-25-02	Trust Account created	Total Due:	8000.00
04-25-02	Bond Exonerated		-5,000.00
04-25-02	Trust Account created	Total Due:	444.98
05-06-02	Filed judgment: Judgment		
	Judge DAVID L. MOWER		
	Signed April 30, 2002		
05-13-02	Judgment Entered - Amount \$8000.00		
05-31-02	Filed order: Amended Judgment		
	Judge DAVID L. MOWER		
	Signed May 28, 2002		
06-04-02	Restitution	Payment Received:	159.67
	Note: Joint/Several Payment		
06-04-02	Interest on Rstitutn	Payment Received:	40.33
06-04-02	Restitution	Payment Received:	0.00
		Credit Received:	160.42
	Note: Joint/Several Payment		
07-08-02	Restitution	Payment Received:	0.00
		Credit Received:	169.39
	Note: Joint/Several Payment		
07-08-02	Restitution	Payment Received:	169.56
	Note: Joint/Several Payment		
07-08-02	Interest on Rstitutn	Payment Received:	30.44
08-20-02	Trust Account created	Total Due:	1000.00
08-20-02	Other Trust	Payment Received:	1,000.00
08-20-02	Filed: Modification of Amended Judgment		
08-30-02	Note:		
08-30-02	Note:		
08-30-02	Restitution Check # 31435	Trust Payout:	329.23
08-30-02	Interest on Rstitutn Check # 31435	Trust Payout:	70.77
09-24-02	Restitution	Payment Received:	132.86
	Note: Joint/Several Payment		
09-24-02	Interest on Rstitutn	Payment Received:	67.14
09-24-02	Restitution	Payment Received:	0.00

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Page 6

CASE NUMBER 011600026 State Felony

	Credit Received:	133.41
	Note: Joint/Several Payment	
12-03-02 Restitution	Payment Received:	141.93
	Note: Joint/Several Payment	
12-03-02 Interest on Rstitutn	Payment Received:	58.07
12-03-02 Restitution	Payment Received:	0.00
	Credit Received:	143.09
	Note: Joint/Several Payment	
03-31-03 Restitution	Payment Received:	106.05
	Note: Joint/Several Payment; Mail Payment;	
03-31-03 Interest on Rstitutn	Payment Received:	93.95
03-31-03 Restitution	Payment Received:	200.00
	Note: Joint/Several Payment; Mail Payment;	
03-31-03 Restitution	Payment Received:	0.00
	Credit Received:	310.29
	Note: Joint/Several Payment; Mail Payment;	
07-09-03 Note:		
07-09-03 Note:		
07-09-03 Restitution Check #	Trust Payout:	580.84
07-09-03 Interest on Rstitutn Check #	Trust Payout:	
		219.16
10-08-03 Note:		
10-08-03 Other Trust Check #	Trust Payout:	1,000.00
11-18-03 Restitution	Payment Received:	0.00
	Credit Received:	832.06
	Note: Joint/Several Payment	
11-18-03 Restitution	Payment Received:	844.95
	Note: Joint/Several Payment	
11-18-03 Interest on Rstitutn	Payment Received:	155.05
01-28-04 Restitution Check # 35095	Trust Payout:	844.95
01-28-04 Interest on Rstitutn Check # 35095	Trust Payout:	
		155.05
08-09-04 Note: Debt Collection Letter 1 sent.		
08-16-04 Restitution	Payment Received:	0.00
	Credit Received:	860.28
	Note: Joint/Several Payment; Mail Payment;	
08-16-04 Restitution	Payment Received:	0.00
	Credit Received:	1,000.00
	Note: Joint/Several Payment; Mail Payment;	
08-16-04 Restitution	Payment Received:	0.00
	Credit Received:	1,000.00
	Note: Joint/Several Payment; Mail Payment;	
08-16-04 Restitution	Payment Received:	0.00
	Credit Received:	1,000.00
	Note: Joint/Several Payment; Mail Payment;	
08-16-04 Restitution	Payment Received:	0.00
	Credit Received:	636.04
	Note: Joint/Several Payment; Mail Payment;	
12-29-04 Filed: Motion to Reduce Categorization of Offense		

12-29-04 Filed: Notice of Compliance
01-18-05 Filed order: Order
 Judge K L MCIFF
 Signed January 11, 2005
01-18-05 Interest on Rstitutn adjusted to \$444.98 Total Due:
 444.98
 Reason: As per Order signed from Judge K. L. McIff on
 1/11/05
01-19-05 Filed: Notice to Submit
01-19-05 Filed: Notice to Submit
01-24-05 Filed order: Order Granting 402 Motion
 Judge K L MCIFF
 Signed January 24, 2005
01-25-05 Charge 1 amended
11-21-05 Judge WALLACE A LEE assigned.
07-30-07 Filed: Motion for Order Requiring Division of Wildlife
 Resources to Reinstate the Hunting Privileges and Licenses of
 Greg C. Johnson
 Filed by: JOHNSON, GREG C
07-30-07 Filed: Memorandum of Points and Authorities in Support of
 Motion for Order Requiring Division of Wildlife Resources to
 Reinstate the Hunting Privileges and Licenses of Greg C.
 Johnson
08-06-07 Filed: Memorandum in Opposition to Defendant's Motion for Order
 Requiring Division of Wildlife Resources to Reinstate the
 Hunting Privileges and Licenses of Greg C. Johnson
01-24-08 HEARING ON MOTION scheduled on January 28, 2008 at 02:30 PM
 with Judge LEE.
01-24-08 Filed: Response to Memorandum in Opposition to Defendant's
 Motion for Order Requiring Division of Wildlife Resources to
 Reinstate the Hunting Privileges and Licenses of Greg C.
 Johnson
01-24-08 Filed: Notice of Hearing on Motion for Order Requiring Division
 of Wildlife Resources to Reinstate the Hunting Privileges and
 Licenses of Greg C. Johnson
01-28-08 Minute Entry - Minutes for HEARING ON MOTION
 Judge: WALLACE A LEE
 PRESENT
 Clerk: tawnin
 TELEPHONE CONFERENCE
 Defendant not present
 Defendant's Attorney(s): HANSEN, MARY ANN

Audio

Tape Number: WCD #15 Tape Count: 4:09

HEARING

Printed: 03/29/09 20:56:45

Page 8

CASE NUMBER 011600026 State Felony

TAPE: WCD #15 COUNT: 4:09

Judge calls the case. Parties are appearing by telephone for hearing today because of weather. Judge got a hold of Martin Bushman, and tried Maryann Hansen twice and couldn't get a hold of her.

Mr. Bushman states that Ms. Hansen clients needed this hearing soon. Clerk is to let the Judge know if Ms. Hansen calls later.

02-25-08 Notice - NOTICE for Case 011600026 ID 9813148

HEARING ON MOTION is scheduled.

Date: 03/24/2008

Time: 02:30 p.m.

Before Judge: WALLACE A LEE

02-25-08 HEARING ON MOTION scheduled on March 24, 2008 at 02:30 PM with Judge LEE.

02-25-08 Filed: Notice of Hearing on Motion

03-24-08 Minute Entry - Minutes for HEARING ON MOTIONS

Judge: WALLACE A LEE

PRESENT

Clerk: tawnin

Defendant

Defendant's Attorney(s): HANSEN, MARY ANN

Audio

Tape Number: WCD #15 Tape Count: 5:00

HEARING

TAPE: WCD #15 COUNT: 5:00

Judge calls the case. Marty Bushman is appearing also on behalf of the State. Parties ask Judge if he has had time to review the memorandums in the file. The judge has not. Parties would like the judge to review those and come back at a later date.

HEARING ON MOTION is scheduled.

Date: 05/27/2008

Time: 02:00 p.m.

Before Judge: WALLACE A LEE

HEARING ON MOTION.

Date: 5/27/2008

Time: 02:00 p.m.

before Judge WALLACE A LEE

HEARING ON MOTION.

Date: 05/27/2008

Time: 02:00 p.m.

before Judge WALLACE A LEE

03-24-08 HEARING ON MOTION scheduled on May 27, 2008 at 02:00 PM with Judge LEE.

03-25-08 Notice - NOTICE for Case 011600026 ID 9836690

HEARING ON MOTION is re-scheduled.

Date: The reason for the change is Stipulation of parties.

Date: 5/27/2008

Time: 02:00 p.m.

before Judge WALLACE A LEE

03-25-08 HEARING ON MOTION Modified.

03-25-08 Note: HEARING ON MOTIONS minutes modified.

03-25-08 HEARING ON MOTION scheduled on May 27, 2008 at 02:00 PM with Judge LEE.

03-25-08 Notice - NOTICE for Case 011600026 ID 9836775

HEARING ON MOTION is scheduled.

Date:

Date:

03-25-08 HEARING ON MOTION Cancelled.

Reason: Incorrect entry

05-27-08 Minute Entry - Minutes for Law and Motion

Judge: WALLACE A LEE

PRESENT

Clerk: tawnin

Defendant

Defendant's Attorney(s): MARY ANN HANSEN

Audio

Tape Number: WCD #17 Tape Count: 2:02

HEARING

TAPE: WCD #17 COUNT: 2:02

Judge calls the case. Case is here today on Motion for hunting privileges. Ms. Hansen gives her opening statement on her motion.

COUNT: 2:19

Mr. Bushman gives his argument to Ms. Hansen's opening.

COUNT: 2:28

Ms. Hansen has a couple other items to argue.

COUNT: 2:31

Judge will take this case under advisement.

05-28-08 Note: LAW AND MOTION minutes modified.

08-14-08 Note: Sent Notice of Appeal to Court of Appeals on 8/15/08.

09-04-08 Fee Account created Total Due: 87.50

09-04-08 REPORTER FEES Payment Received: 87.50

Note: REPORTER FEES, Mail Payment;

10-03-08 Note: This is the balance owed on the Johnson/Lynn transcript.

10-03-08 Fee Account created Total Due: 8.50

10-03-08 REPORTER FEES Payment Received: 8.50

Printed: 03/29/09 20:56:46

Page 10

CASE NUMBER 011600026 State Felony

Note: REPORTER FEES, Mail Payment;

10-03-08 Judgment #1 Modified \$ 8000.00 Disposition: Satisfied

SIXTH JUDICIAL DISTRICT - Loa
WAYNE COUNTY, STATE OF UTAH

APPEALED: CASE #20080701

STATE OF UTAH vs. KERRY EUGENE LYNN

CASE NUMBER 011600027 State Felony

Defendants GREG C JOHNSON, KERRY EUGENE LYNN, are linked.

Trust Accounts are jointly and severally linked with accounts
on cases: 011600026

CHARGES

Charge 1 - 23-20-4 - ATTEMPTED WANTON DESTRUCTION OF PROTECTED
WILDLIFE Class A Misdemeanor (amended) to Class A Misdemeanor
Offense Date: October 28, 2001

Plea: April 22, 2002 Not Guilty

Disposition: April 22, 2002 Guilty

Charge 2 - 23-20-4 - WANTON DESTRUCTION OF PROTECTED WILDLIFE
3rd Degree Felony

Offense Date: October 28, 2001

Disposition: April 22, 2002 Dismissed

Charge 3 - 41-22-3 - NO OFF ROAD VEHICLE REGISTRATION Class B
Misdemeanor

Offense Date: October 28, 2001

Disposition: April 22, 2002 Dismissed

Charge 4 - WR130 - CRIMINAL TRESPASSING (WL) Class B
Misdemeanor

Offense Date: October 28, 2001

Disposition: April 22, 2002 Dismissed

CURRENT ASSIGNED JUDGE

WALLACE A LEE

PARTIES

Plaintiff - STATE OF UTAH

Represented by: MARVIN D BAGLEY

Represented by: MARY ANN HANSEN

Defendant - KERRY EUGENE LYNN

Represented by: MARY ANN HANSEN

DEFENDANT INFORMATION

Defendant Name: KERRY EUGENE LYNN

Printed: 03/29/09 20:12:01

Page 1

CASE NUMBER 011600027 State Felony

Offense tracking number: 14390421
 Date of Birth: October 02, 1962
 Law Enforcement Agency: WILDLIFE RESOURCES
 Prosecuting Agency: WAYNE COUNTY
 Arrest Date: October 28, 2001

ACCOUNT SUMMARY

PAPER BOND TOTALS Posted: 5,000.00
 Forfeited: 0.00
 Exonerated: 5,000.00
 Balance: 0.00

TRUST TOTALS Trust Due: 9,591.06
 Amount Paid: 7,836.04
 Credit: 1,755.02
 Trust Balance Due: 0.00
 Balance Payable: 0.00

NONMONETARY BOND DETAIL - TYPE: Surety

Posted By: BEEHIVE BAIL BONDS
 Posted: 5,000.00
 Forfeited: 0.00
 Exonerated: 5,000.00
 Balance: 0.00

TRUST DETAIL

Trust Description: Interest on Rstitutn
 Recipient: DIVISION OF WILDLIFE RESOURCES
 Amount Due: 591.06
 Paid In: 591.06
 Paid Out: 591.06

Account Adjustments

Date	Amount	Reason
Aug 16, 2004	594.75	Interest Posted to Date
Aug 16, 2004	-3.69	Paid in full, interest waived.

TRUST DETAIL

Trust Description: Other Trust
 Recipient: MARVIN D BAGLEY WAYNE COUNTY ATTORNEY
 Amount Due: 1,000.00
 Paid In: 1,000.00
 Paid Out: 1,000.00

TRUST DETAIL

Trust Description: Restitution
 Recipient: DIVISION OF WILDLIFE RESOURCES

Printed: 03/29/09 20:12:02

Page 2

CASE NUMBER 011600027 State Felony

Amount Due:	8,000.00
Credit:	1,755.02
Paid In:	6,244.98
Paid Out:	6,244.98

PROCEEDINGS

11-19-01 Filed: Notice of Appearance Entry of Plea and Request for Jury Trial

11-19-01 Filed: Request for Discovery

11-29-01 Case filed

11-29-01 Filed: From an Information

11-29-01 Filed: Notice to Appear

11-29-01 Filed: Discovery Submittal

11-29-01 Filed: Information

11-30-01 Judge DAVID L. MOWER assigned.

11-30-01 Judge K L MCIFF assigned.

11-30-01 Bond Account created Total Due: 5000.00

11-30-01 Bond Posted Non-Monetary Bond: 5,000.00

11-30-01 INITIAL APPEARANCE scheduled on December 21, 2001 at 02:00 PM with Judge MOWER.

12-14-01 INITIAL APPEARANCE Cancelled.
Reason: Plaintiff's request

12-14-01 INITIAL APPEARANCE scheduled on January 28, 2002 at 02:00 PM with Judge MCIFF.

12-14-01 Filed: Amended Notice to Appear

01-28-02 Minute Entry -
Judge: K L MCIFF
PRESENT
Clerk: tawnin
Prosecutor: BAGLEY, MARVIN D.
Defendant
Defendant's Attorney(s): HANSEN, MARY ANN

Audio
Tape Number: 12802 Tape Count: 478-526

INITIAL APPEARANCE

The defendant requests a Preliminary Hearing.
Parties have agreed to set case for Preliminary Hearing on Feb. 25, 2002 at 2:00 p.m. Judge explains to the defendants about the preliminary hearing.

PRELIMINARY HEARING is scheduled.

Date: 02/25/2002

Time: 02:00 p.m.

before Judge DAVID L. MOWER

01-28-02 PRELIMINARY HEARING scheduled on February 25, 2002 at 02:00 PM with Judge MOWER.

CASE NUMBER 011600027 State Felony

01-29-02 Notice - NOTICE for Case 011600027 ID 1269496
 PRELIMINARY HEARING is scheduled.
 Date: 02/25/2002
 Time: 02:00 p.m.
 before Judge DAVID L. MOWER

01-30-02 Filed: Notice of Preliminary Hearing

02-06-02 PRELIMINARY HEARING rescheduled on March 25, 2002 at 02:00 PM
 Reason: Conflict in attorney schedule.

02-06-02 Notice - NOTICE for Case 011600027 ID 1273979
 PRELIMINARY HEARING is re-scheduled.
 Date: 03/25/2002
 Time: 02:00 p.m.
 Before Judge: K L MCIFF
 The reason for the change is Conflict in attorney schedule.

02-06-02 Filed: Notice of Preliminary Hearing

03-15-02 Filed: Amended Notice of Hearing

03-15-02 PRELIMINARY HEARING scheduled on April 22, 2002 at 02:00 PM
 with Judge MOWER.

03-20-02 PRELIMINARY HEARING scheduled on April 22, 2002 at 02:00 PM
 with Judge MOWER.

03-20-02 PRELIMINARY HEARING Cancelled.

04-22-02 Minute Entry - Minutes for Preliminary Hearing
 Judge: DAVID L. MOWER
 PRESENT
 Clerk: tawnin
 Prosecutor: BAGLEY, MARVIN D.
 Defendant
 Defendant's Attorney(s): HANSEN, MARY ANN

Audio

Tape Number: 42202 Tape Count: 38-586

HEARING

TAPE: 42202 COUNT: 38-586

Judge calls the case. Case is scheduled for preliminary hearing. Parties have reached an agreement. This case has a companion case with Greg Johnson case #011600026. Defendants will plead guilty to count 1 and dismiss counts 2,3 & 4.

Defendants reside in Juab County. Defendants will pay restitution joint and severally \$8,000.00. One 4-wheeler and 2 guns have to be purchased back from DWR. Defendants will be on probation for 2 years. Judge gives defendants their rights & penalties.

Judge questions defendants about October 20, 2001, and what happened on this day. Judge accepts their plea. Other counts are dismissed. Defendants will be unsupervised probation by the court.

State is to notify DWR that the parties are interested in buying their property back.

SENTENCE PRISON

Note: Joint/Several Payment			
06-04-02	Restitution	Payment Received:	160.42
Note: Joint/Several Payment			
06-04-02	Interest on Rstitutn	Payment Received:	39.58
07-08-02	Restitution	Payment Received:	169.39
Note: Joint/Several Payment			
07-08-02	Interest on Rstitutn	Payment Received:	30.61
07-08-02	Restitution	Payment Received:	0.00
		Credit Received:	169.56
Note: Joint/Several Payment			
08-20-02	Trust Account created	Total Due:	1000.00
08-20-02	Other Trust	Payment Received:	1,000.00
08-26-02	Filed: Modification of Amended Judgment		
08-30-02	Note:		
08-30-02	Note:		
08-30-02	Restitution Check # 31585	Trust Payout:	329.81
08-30-02	Interest on Rstitutn Check # 31585	Trust Payout:	70.19
09-24-02	Restitution	Payment Received:	0.00
		Credit Received:	132.86
Note: Joint/Several Payment			
09-24-02	Restitution	Payment Received:	133.41
Note: Joint/Several Payment			
09-24-02	Interest on Rstitutn	Payment Received:	66.59
12-03-02	Restitution	Payment Received:	0.00
		Credit Received:	141.93
Note: Joint/Several Payment			
12-03-02	Restitution	Payment Received:	143.09
Note: Joint/Several Payment			
12-03-02	Interest on Rstitutn	Payment Received:	56.91
03-31-03	Restitution	Payment Received:	0.00
		Credit Received:	106.05
Note: Joint/Several Payment; Mail Payment;			
03-31-03	Restitution	Payment Received:	0.00
		Credit Received:	200.00
Note: Joint/Several Payment; Mail Payment;			
03-31-03	Restitution	Payment Received:	310.29
Note: Joint/Several Payment; Mail Payment;			
03-31-03	Interest on Rstitutn	Payment Received:	89.71
07-09-03	Note:		
07-09-03	Note:		
07-09-03	Restitution Check #	Trust Payout:	586.79
07-09-03	Interest on Rstitutn Check #	Trust Payout:	213.21
10-08-03	Note:		
10-08-03	Other Trust Check #	Trust Payout:	1,000.00
11-18-03	Restitution	Payment Received:	832.06
Note: Joint/Several Payment			
11-18-03	Interest on Rstitutn	Payment Received:	167.94

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CASE NUMBER 011600027 State Felony

11-18-03	Restitution	Payment Received:	0.00
		Credit Received:	844.95
	Note: Joint/Several Payment		
01-28-04	Restitution Check # 35095	Trust Payout:	832.06
01-28-04	Interest on Rstitutn Check # 35095	Trust Payout:	167.94
08-09-04	Note: Debt Collection Letter 1 sent.		
08-16-04	Interest on Rstitutn adjusted to \$591.06	Total Due:	591.06
	Reason: Paid in full, interest waived.		
08-16-04	Restitution	Payment Received:	860.28
	Note: Joint/Several Payment; Mail Payment;		
08-16-04	Interest on Rstitutn	Payment Received:	139.72
08-16-04	Restitution	Payment Received:	1,000.00
	Note: Joint/Several Payment; Mail Payment;		
08-16-04	Restitution	Payment Received:	1,000.00
	Note: Joint/Several Payment; Mail Payment;		
08-16-04	Restitution	Payment Received:	1,000.00
	Note: Joint/Several Payment; Mail Payment;		
08-16-04	Restitution	Payment Received:	636.04
	Note: Joint/Several Payment; Mail Payment;		
12-29-04	Filed: Motion to Reduce Categorization of Offense		
12-29-04	Filed: Notice of Compliance		
01-19-05	Filed: Notice to Submit		
01-25-05	Charge 1 amended		
04-08-05	Restitution Check # 37086	Trust Payout:	4,496.32
04-08-05	Interest on Rstitutn Check # 37086	Trust Payout:	139.72
11-21-05	Judge WALLACE A LEE assigned.		
07-30-07	Filed: Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Kerry E. Lynn		
	Filed by: LYNN, KERRY EUGENE		
07-30-07	Filed: Memorandum of Points and Authorities in Support of Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Kerry E. Lynn		
08-06-07	Filed: Memorandum in Opposition to Defendant's Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses of Kerry E. Lynn		
01-17-08	Filed: Motion for Order to Correct Clerical Oversight		
	Filed by: LYNN, KERRY EUGENE		
01-17-08	Filed: Memorandum of Points and Authorities in Support of Motion for Order to Correct Clerical Oversight		
01-24-08	HEARING ON MOTION scheduled on January 28, 2008 at 02:30 PM with Judge LEE.		
01-24-08	Filed: Response to Memorandum in Opposition to Defendant's Motion for Order Requiring Division of Wildlife Resources to Reinstate the Hunting Privileges and Licenses Kerry E. Lynn		
01-24-08	Filed: Notice to Submit for Decision		

of Wildlife Resources to Reinstate the Hunting Privileges and
Licenses of Kerry E. Lynn

01-28-08 Minute Entry - Minutes for HEARING ON MOTION

Judge: WALLACE A LEE

PRESENT

Clerk: tawnin

TELEPHONE CONFERENCE

Defendant not present

Defendant's Attorney(s): HANSEN, MARY ANN

Audio

Tape Number: WCD #15 Tape Count: 4:09

HEARING

TAPE: WCD #15 COUNT: 4:09

Judge calls the case. Parties are appearing by telephone for the hearing today because of weather. Judge got a hold of Martin Bushman, and tried Maryann Hansen twice and couldn't get a hold of her.

Mr. Bushman states that Ms. Hansen clients needed this hearing soon. Clerk is to let the Judge know if Ms. Hansen calls later.

01-28-08 Filed order: Order Correcting Clerical Oversight

Judge WALLACE A LEE

Signed January 28, 2008

02-25-08 Notice - NOTICE for Case 011600027 ID 9813311

HEARING ON MOTION is scheduled.

Date: 03/24/2008

Time: 02:30 p.m.

Before Judge: WALLACE A LEE

02-25-08 HEARING ON MOTION scheduled on March 24, 2008 at 02:30 PM with Judge LEE.

02-25-08 Filed: Notice of Hearing on Motion

03-24-08 Minute Entry - Minutes for HEARING ON MOTION

Judge: WALLACE A LEE

PRESENT

Clerk: tawnin

Defendant

Defendant's Attorney(s): HANSEN, MARY ANN

Audio

Tape Number: WCD #15 Tape Count: 5:00

HEARING

TAPE: WCD #15 COUNT: 5:00

Judge calls the case. Marty Bushman is appearing on behalf of the

Printed: 03/29/09 20:12:06

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CASE NUMBER 011600027 State Felony

state. Parties ask the judge if he has had time to read the memorandums. The judge has not had time to read them. The parties

would like to have the case heard at a later time.

HEARING ON MOTION is scheduled.

Date: 05/27/2008

Time: 02:00 p.m.

before Judge WALLACE A LEE

03-24-08 HEARING ON MOTION scheduled on May 27, 2008 at 02:00 PM with
Judge LEE.

03-25-08 Notice - NOTICE for Case 011600027 ID 9836687

HEARING ON MOTION is scheduled.

Date: 05/27/2008

Time: 02:00 p.m.

before Judge WALLACE A LEE

03-25-08 Filed: Notice of Hearing on Motion

05-27-08 Minute Entry - Minutes for Law and Motion

Judge: WALLACE A LEE

PRESENT

Clerk: tawnin

Defendant

Defendant's Attorney(s): MARY ANN HANSEN

Audio

Tape Number: WCD #17 Tape Count: 2:02

HEARING

TAPE: WCD #17 COUNT: 2:02

Judge calls the case. Case is here today on Motion to regain
hunting privileges. Ms. Hansen gives her opening statement on her
motion.

COUNT: 2:28

Ms. Hansen has a couple other items to argue.

COUNT: 2:31

Judge will take this case under advisement.

COUNT: 2:19

Mr. Bushman gives his argument to Ms. Hansen's opening.

07-17-08 Filed order: Memorandum Decision and Order

Judge WALLACE A LEE

Signed July 17, 2008

08-14-08 Filed: Notice of Appeal

08-14-08 Note: Court sent Notice of Appeal to Court of Appeals on
8/15/08.

09-22-08 Filed: Order from the Court of Appeals

02-10-09 Filed order: Order Granting 402 Motion

Judge WALLACE A LEE

Signed February 10, 2009

02-10-09 Filed order: Order on Temporary Remand From Utah Court of
Appeals

Printed: 03/29/09 20:12:07

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CASE NUMBER 011600027 State Felony

Judge WALLACE A LEE

Signed February 10, 2009

02-17-09 Note: Appealed: Case #20080701

Printed: 03/29/09 20:12:07

Page 10 (last)

EXHIBIT “8”

RECEIVED

JAN 17 2008

6TH DIST. BLK. 101
CLERK - TN


MARY ANN HANSEN (5200)
COUNSEL FOR DEFENDANT
852 NORTH 910 EAST
OREM, UTAH 84097
Telephone (801) 224-0079
Facsimile (801) 734-2222

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	
Plaintiff,	:	MOTION FOR ORDER TO
	:	CORRECT CLERICAL OVERSIGHT
vs.	:	
	:	
KERRY E. LYNN,	:	
	:	
Defendant.	:	CASE NO. 011600027
	:	Judge: Wallace A. Lee

COMES NOW, the Defendant, KERRY E. LYNN, by and through counsel, Mary Ann Hansen, and hereby moves this Court to sign and enter the Order Granting 402 Motion previously submitted to this Court and that said Order be entered effective as of January 25, 2005.

DATED this 17th day of January, 2008.

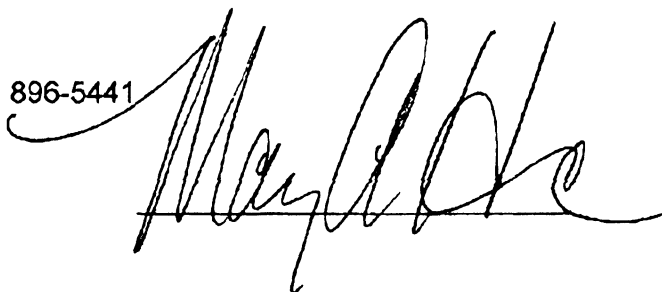

MARY ANN HANSEN
Attorney for Defendant



CERTIFICATE OF DELIVERY

I hereby certify that I mailed () or hand delivered () or faxed () a true and correct copy of the foregoing Motion for Order to Correct Clerical Oversight was sent via facsimile to the following parties, on this 17th day of January, 2008.

Mark K. McIlff
Wayne County Prosecutor
225 North East
Richfield, UT 84701
also sent via facsimile to (435) 896-5441

A handwritten signature in black ink, appearing to read 'Mark K. McIlff', is written over a horizontal line.

FILED

JAN 17 2008

6TH DISTRICT COURT
CLERK TN

MARY ANN HANSEN (5200)
COUNSEL FOR DEFENDANT
852 NORTH 910 EAST
OREM, UTAH 84097
Telephone (801) 224-0079
Facsimile (801) 734-2222

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	MEMORANDUM OF POINTS AND
	:	AUTHORITIES IN SUPPORT OF
Plaintiff,	:	MOTION FOR ORDER TO
	:	CORRECT CLERICAL OVERSIGHT
vs.	:	
KERRY E. LYNN,	:	
	:	
Defendant.	:	CASE NO. 011600027
	:	Judge: Wallace A. Lee

COMES NOW, MARY ANN HANSEN, on behalf of the Defendant,
KERRY E. LYNN, and hereby submits the following Memorandum of Points and
Authorities in Support of Motion for Order to Correct Clerical Oversight.

STATEMENT OF MATERIAL FACTS

1. That on the 29th day of January, 2002, the Defendant Kerry E. Lynn, plead guilty to third degree felony attempted wanton destruction of protected wildlife in the above referenced matter.
2. That there is a companion case titled State of Utah vs. Greg C.

Page 1 of 4

Memorandum of Points and Authorities in Support of Mo



CD22900998

pages: 10

011600027 LYNN,KERRY EUGENE

Johnson as Civil No. 011600026. In this Court on the 29th day of January, 2002, Mr. Johnson also plead guilty to attempted wanton destruction of protected wildlife.

3. That as part of the joint plea negotiations of Defendants Kerry E. Lynn and Greg C. Johnson ("Lynn" and "Johnson") and the Wayne County prosecutor, Marvin D. Bagley, it was agreed that if Lynn and Johnson successfully completed their respective probations without any further offenses, paid all fines, and completed all community services, that the Defendants could then submit a 402 Motion and have their convictions amended to a misdemeanor and that their hunting license and/or privileges would only be suspended for a period of five years from conviction.

4. That on or about the 29th day of December, 2004, the Defendants Lynn and Johnson filed separate pleadings titled Motion to Reduce Categorization of Offense ("Motion to Reduce"). Said Motions to Reduce were mailed to prosecutor Marvin D. Bagley on December 28, 2004.

5. That Marvin D. Bagley did not object or respond to the Lynn and Johnson Motions to Reduce, and so on January 18, 2005 counsel for Defendants Lynn and Johnson mailed separate pleadings titled Order Granting 402 Motion and Notice to Submit.

6. That on or about January 24, 2005, Judge K.L. McIlff signed Defendant Johnson Order Granting 402 Motion ("Order"). It is believed that the Lynn and Johnson Orders were submitted together and since they were identical except for

the Defendant names and case numbers that Judge McIlff inadvertently did not sign the Lynn Order.

7. That this Court mailed to Defendant's counsel copies of the Defendant Lynn and Johnson Orders Granting 402 Motion. That attached hereto as Exhibit "A" are copies of Orders evidencing a court stamp on the top right of the first pages of the Lynn and Johnson Orders.

8. That the Court docket on both Defendant Lynn and Johnson indicate that on January 25, 2005 that each of their charges were amended to Class A Misdemeanors.

9. That the copy of the Lynn Order received by Defendant's counsel contained a second page which was signed by Judge McIlff and the copy of the Johnson order was not signed by Judge McIlff.

10. That counsel for Defendants contacted the Court and requested a copy of a signed Johnson order. That attached hereto as Exhibit "B" is a copy of the faxed Johnson Order from the Court.

11. That in September 2007, counsel for Defendant learned that the Lynn Order had not been signed and that the Johnson Order was the only Order that had been signed.

**RULE 60(a) OF THE UTAH RULES OF CIVIL PROCEDURE
PROVIDES THAT CLERICAL ERRORS MAY BE CORRECTED**

Rule 60(a) of the Utah Rules of Civil Procedure provides as follows:

[C]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

As is set forth above, there exists good cause to believe that some sort of mistake and/or oversight occurred and the Lynn Order was inadvertently intended to be signed and was not signed. This is evidenced by the fact that a signed copy of the Lynn Order was date stamped and mailed to Defendant's counsel which contained the signature page of the Johnson Order. Additionally, it is evident that the Lynn Order was intended to have been signed since the Johnson Order was identical and it was signed and the judgments in both the Lynn and Johnson matters were modified in the court dockets.

Therefore, based upon the facts and arguments herein, counsel for Defendant Lynn respectfully requests that the Order submitted by Defendants' counsel be signed and entered effective as of January 25, 2005 which is the date that the Johnson ordered was entered

DATED this 17th day of January, 2008.



MARY ANN HANSEN

Attorney for Defendant, Kerry E. Lynn

MARY ANN HANSEN (5200)
HARRIS & CARTER
COUNSEL FOR DEFENDANT
3325 NORTH UNIVERSITY AVENUE, SUITE 200
PROVO, UTAH 84604
Telephone (801) 375-9801
Facsimile (801) 377-1149

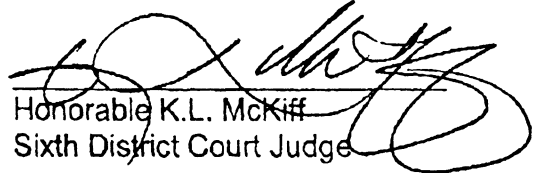
IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	ORDER GRANTING 402 MOTION
Plaintiff,	:	
	:	
vs.	:	
	:	
KERRY E. LYNN,	:	CASE NO. 011600027
	:	
Defendant.	:	Judge: K.L. MCIFF

THIS MATTER having come before the Court on the Defendant's Motion to Enter a 402 Reduction of Conviction, the Court having reviewed the file and being duly advised in the premises hereby grants Defendant's Motion and Orders that the judgment entered convicting Defendant of a Third Degree Felony is hereby reduced to a conviction of a Misdemeanor simple attempted wanton destruction of protected wildlife. Additionally, Defendant's hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction.

DATED AND SIGNED this 24 day of January, 2005.

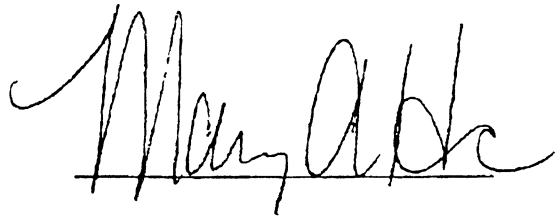
BY THE COURT:


Honorable K.L. McKiff
Sixth District Court Judge

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 18th day of January, 2005, by first-class, U.S. Mail, postage prepaid to the following:


Marvin Bagley
Wayne County Attorney
180 North 100 East #F
Richfield, UT 84701



NOTICE

The foregoing Order has been submitted to the Court for execution and entry. Pursuant to Utah Rules of Civil Procedure 7(f)(2), any objection as to the form of the order should be filed with the Court, within five days after service upon you of this notice.

DATED this 18th day of January, 2005.


MARY ANN HANSEN,
Attorney for Plaintiff

MARY ANN HANSEN (5200)
HARRIS & CARTER
COUNSEL FOR DEFENDANT
3325 NORTH UNIVERSITY AVENUE, SUITE 200
PROVO, UTAH 84604
Telephone (801) 375-9801
Facsimile (801) 377-1149

TV

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff,	:	ORDER GRANTING 402 MOTION
vs	:	
GREG C JOHNSON,	:	CASE NO 011600026
Defendant.	:	Judge K L MCIFF

THIS MATTER having come before the Court on the Defendant's Motion to Enter a 402 Reduction of Conviction, the Court having reviewed the file and being duly advised in the premises hereby grants Defendant's Motion and Orders that the judgment entered convicting Defendant of a Third Degree Felony is hereby reduced to a conviction of a Misdemeanor simple attempted wanton destruction of protected wildlife. Additionally, Defendant's hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction.

DATED AND SIGNED this ____ day of January, 2005.

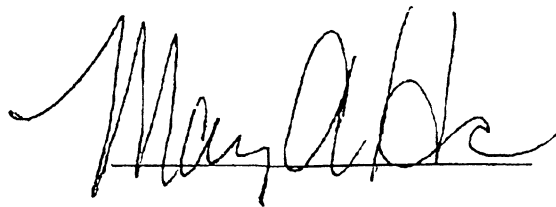
BY THE COURT:

Honorable K.L. McKiff
Sixth District Court Judge

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 18th day of January, 2005, by first-class, U.S. Mail, postage prepaid to the following:

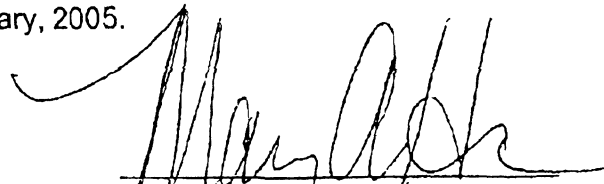
Marvin Bagley
Wayne County Attorney
180 North 100 East #F
Richfield, UT 84701



NOTICE

The foregoing Order has been submitted to the Court for execution and entry. Pursuant to Utah Rules of Civil Procedure 7(f)(2), any objection as to the form of the order should be filed with the Court, within five days after service upon you of this notice.

DATED this 18th day of January, 2005.



MARY ANN HANSEN,
Attorney for Plaintiff

MARY ANN HANSEN (5200)
HARRIS & CARTER
COUNSEL FOR DEFENDANT
3325 NORTH UNIVERSITY AVENUE, SUITE 200
PROVO, UTAH 84604
Telephone (801) 375-9801
Facsimile (801) 377-1149

FILED
APR 23 2007
CLERK OF DISTRICT COURT

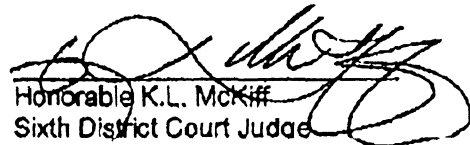
IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	ORDER GRANTING 402 MOTION
Plaintiff,	:	
	:	
vs.	:	
	:	
GREG C. JOHNSON,	:	CASE NO. 011600026
	:	
Defendant.	:	Judge: K.L. MCIFF

THIS MATTER having come before the Court on the Defendant's Motion to Enter a 402 Reduction of Conviction, the Court having reviewed the file and being duly advised in the premises hereby grants Defendant's Motion and Orders that the judgment entered convicting Defendant of a Third Degree Felony is hereby reduced to a conviction of a Misdemeanor simple attempted wanton destruction of protected wildlife. Additionally, Defendant's hunting privileges are suspended until April 22, 2007 which is five years from the date of conviction.

DATED AND SIGNED this 24 day of January, 2005.

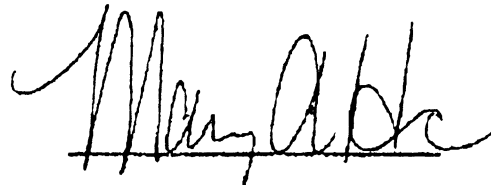
BY THE COURT.


Honorable K.L. McKiff
Sixth District Court Judge

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 18th day of January, 2005, by first-class, U.S. Mail, postage prepaid to the following:


Marvin Bagley
Wayne County Attorney
180 North 100 East #F
Richfield, UT 84701



NOTICE

The foregoing Order has been submitted to the Court for execution and entry. Pursuant to Utah Rules of Civil Procedure 7(f)(2), any objection as to the form of the order should be filed with the Court, within five days after service upon you of this notice.

DATED this 18th day of January, 2005.


MARY ANN HANSEN,
Attorney for Plaintiff

RECEIVED

JAN 28 2008

6TH DISTRICT COURT
CLERK - JN

MARY ANN HANSEN (5200)
COUNSEL FOR DEFENDANT
852 NORTH 910 EAST
OREM, UTAH 84097
Telephone (801) 224-0079
Facsimile (801) 734-2222

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR WAYNE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	
Plaintiff,	:	ORDER CORRECTING
	:	CLERICAL OVERSIGHT
vs.	:	
	:	
KERRY E. LYNN,	:	
	:	
Defendant.	:	CASE NO. 011600027
	:	Judge: Wallace A. Lee

THIS MATTER having come before Court on the Defendant's Motion for Order to Correct Clerical Oversight, the Court having reviewed the file and being fully advised in the premises, hereby grants Defendant's Motion and Orders that the "Order Granting 402 Motion" previously submitted to this Court be signed and that the effective date of said Order be January 25, 2005.

DATED this 28th day of January, 2008.

Order Correcting Clerical Oversight



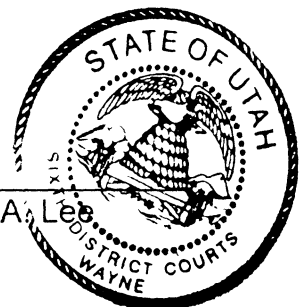
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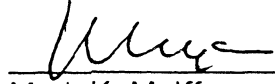
J11600027 LYNN, KERRY EUGENE

BY THE COURT:

Honorable Wallace A. Lee



Approved as to Form:

A handwritten signature in black ink, appearing to read 'McLiff', written over a horizontal line.

Mark K. McLiff,
Wayne County Prosecutor